

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

KEURIG, INCORPORATED,)	
)	
Plaintiff,)	
)	
v.)	C.A. No. 07-17 (GMS)
)	
KRAFT FOODS GLOBAL, INC.,)	JURY TRIAL DEMANDED
TASSIMO CORPORATION, and)	
KRAFT FOODS INC.,)	PUBLIC VERSION
)	
Defendants.)	

DEFENDANTS' OPPOSITION TO KEURIG'S MOTION IN LIMINE NO. 3

OF COUNSEL

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Dated: August 15, 2008

Public Version Dated: August 22, 2008
878744 / 31118

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Attorneys for Defendants
Kraft Foods Global, Inc., Tassimo
Corporation, and Kraft Foods Inc.

Defendants Kraft Foods Global, Inc., Tassimo Corporation, and Kraft Foods Inc. (collectively “Kraft”), by counsel, hereby file this opposition to Keurig’s Motion *in Limine* No. 3. Plaintiff Keurig, Incorporated (“Keurig”) seeks to exclude evidence at trial regarding production records and other documents they asked for during the course of litigation, which Kraft produced prior to the close of discovery. Keurig’s Motion should be denied for two reasons. First, Keurig’s Motion should be denied because Keurig asserts baseless grounds for exclusion of this highly-relevant and probative evidence for which an appropriate foundation has been laid. Second, not until such evidence is actually offered at trial will the Court be in a position to even consider excluding the evidence.

ARGUMENT

Keurig seeks to exclude two classes of business records produced during discovery by Kraft that show the public use of Kraft’s products anticipates Keurig’s ‘762 patent: (1) documents retained by Kraft employees Janice Appleton, Helen Glus, and Geraldine Greto (“shipping documents”) that show Kraft’s Kenco Singles cartridges (“Singles Cartridges”) were shipped to the United States for consumption on multiple occasions prior to February 18, 1999; and (2) [REDACTED] production records (“production records”)¹ [REDACTED]

Keurig seeks to evade the issue of whether its patent is invalid by moving the Court to exclude documentary evidence that demonstrates the public use of Singles Cartridges. Keurig seeks to exclude both classes of documentary evidence on the same grounds – that each is hearsay not subject to any exception and that each is untrustworthy. Keurig is wrong and wastes this Court’s time by citing the Federal Circuit’s decisions in *Medichem* and *Chen*, which have

¹ As a courtesy, Kraft also provided Keurig with a native Excel version of the production records.

nothing to do with Rule 803 or business records, but instead relate to corroborating inventor testimony that is presumed to be unreliable. Mot. at 3.

As an initial matter, Keurig's Motion does not even contend that the evidence it seeks to exclude is not relevant or probative. Indeed such a contention would border on the frivolous. The relevance of the business records at issue is significant as they prove that the '762 Patent is invalid due to prior use of Singles Cartridges in this country. *See* 35 U.S.C. §§ 102(a), (b). Stated another way, when the documents are introduced, Keurig's case evaporates. The shipping documents demonstrate, without question, that Singles Cartridges were circulated for use in the United States as early as 1995. Janice Appleton, Helen Glus, and Geraldine Greto are all Kraft employees who testified at length during deposition about the documents in question. And all three witnesses testified at deposition to their own personal knowledge that Singles cartridges were in public use in the United States prior to February 18, 1999. *See, e.g.*, Greto Depo. Tr. (Ex. 1) 19:22–20:15; Glus Depo. Tr. (Ex. 2) at 11:23–14:21; Appleton Depo. Tr. (Ex. 3) 41:16–42:9. Moreover, Ms. Glus and Ms. Greto will be available at trial.

With respect to the production documents, the analysis is the same.² Kraft produced the documents promptly upon their discovery in March 2008. Because all counsel were previously scheduled to be in England for Keurig's depositions of Mr. Hubert Weber and Mr. Andrew Bentley, Kraft also made the production records' custodian, Michael Tamblin, available to testify about those records. At deposition, Tamblin's testimony demonstrated that Kraft's regular practice was to keep production records for the Singles business. That evidence, and the

² Contrary to Keurig's assertion, Kraft's case is not limited to the Kraft Kenco Medium Roast Singles Cartridges [REDACTED]. Although, Kraft focused on those cartridges solely for purposes of summary judgment, Kraft asserts that all varieties Singles cartridges listed on the shipping documents [REDACTED] anticipate the '762 Patent.

Appleton, Glus, Greto documents, are highly relevant and probative of the invalidity of the '762 patent.

Further, the hearsay exclusionary rule does not apply to either the shipping documents or to the production records because they clearly admissible under the business records exception set forth in Fed. R. Evid. 803(6). Contrary to Keurig's assertion, Kraft can satisfy the foundation requirements of Rule 803(6) for both the shipping documents and for the production documents. In fact, a close examination of the depositions of Appleton, Glus, and Greto demonstrates that an appropriate foundation was laid for the admissibility of the documents.³ See e.g., Ex. 1 at 8:13–28:22; Ex. 2 at 29:4–30:14; Ex. 3 at 23:21–62:3. Each witness testified from her own personal knowledge. See, e.g., Ex. 1 at 9:2–10:15; 26:11–28:22; Ex. 2 at 20:19–21:18; 25:24–26:14; Ex. 3 at 23:21–25:8; 64:20–65:10; *see also United States v. Console*, 13 F.3d 641, 658 (3d Cir. 1993) (Documents created from personal knowledge "provide sufficient indicia of trustworthiness to satisfy the business record exception."). And each testified that the files from which the documents came were regularly kept in the ordinary course of their responsibilities as employees of Kraft. Ex. 1 at 8:14–9:5; Ex. 2 at 17:4–17:17; Ex. 3 at 79:15–80:3. Finally, there is no suggestion that the shipping documents were created for purposes of this litigation.

The same is true for the production records. An appropriate foundation was laid at deposition for the admissibility of the documents. As described above, because counsel were scheduled to be in England for two of Keurig's depositions, Kraft offered Michael Tamblin to testify on short notice because he was the plant master data-controller working on [REDACTED]

³ Moreover, any communications from Appleton, Glus, and Greto are admissible as present sense impressions and were authenticated as such at deposition. In addition, the shipping documents are admissible under Fed. R. Evid. 807 because: (1) the relevance of these shipping documents are not contested, (2) Keurig has had sufficient opportunity to address these documents in advance of trial, and (3) they are more probative than any other evidence that could be obtained by reasonable efforts for events that took place a decade ago.

computer system that generated the records, Tamblin Depo. Tr. (Ex. 4) at 5:21–23, and prior to 2005, Tamblin was the production manager who was familiar with data entry into the computer. *Id.* at 16:5–8. Tamblin, the custodian of the production records, was questioned by Keurig's counsel at length regarding the production records and his personal involvement in generating and producing the documents. *Id.* at 18:14–16. And again, there is no suggestion that the production records were created for purposes of litigation; Tamblin testified from personal knowledge that production records were regularly kept in the ordinary course of Kraft's business. *Id.* at 16:24–17:4.⁴

To the extent, as Keurig claims, Tamblin couldn't recall certain details about the production documents, that does not mean the documents are inadmissible. Rule 803(6) does not require that the custodian to have created the records but instead that the custodian be familiar with the system from which they were generated. *United States v. Pellulo*, 964 F.2d 193, 201 (3d Cir. 1992). Mr. Tamblin requested Kraft's IT personnel to generate a program that could query the [REDACTED] production database to create the records in question. Ex. 4 at 18:14–19:21. Furthermore, Mr. Tamblin used the system personally in his prior role as a production manager with a different division [REDACTED], which includes the Singles business. *Id.* at 14:22–16:4. Any perceived deficiencies in testimony goes to the weight of the evidence, and should be evaluated by a jury. Keurig had ample opportunity to depose Tamblin and will have further opportunity to explore his testimony at trial. But the production documents are admissible as business records.

Similarly, Keurig's final argument that the documents should not be admitted because they are "incomplete and untrustworthy" is unpersuasive. Mot. At 5. Rule 803(6) declares that

⁴ Notably, in a contemporaneous motion *in limine*, Keurig is also seeking to exclude the testimony of witnesses that can also authenticate the production records – and in greater detail.

business records are admissible “unless the source of the information or the method or circumstances of preparation indicate lack of trustworthiness.” Fed. R. Evid. 803(6). Neither is present here, Keurig’s misleading citations to *Medichem* and *Chen* notwithstanding. As described above, the sources of the documents – Appleton, Glus, Greto, and Tamblin all testified and were questioned at length by Keurig’s counsel regarding the production records and each’s personal involvement in generating, maintaining, and producing the documents. Once again, Keurig’s counsel had the opportunity to question them on any deficiency in their testimony or in the production of documents, which goes to the weight of the evidence, not its admissibility.

CONCLUSION

For the foregoing reasons, Keurig’s Motion should be denied.

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By: /s/ David E. Moore

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*Attorneys for Defendants
 Kraft Foods Global, Inc., Tassimo
 Corporation, and Kraft Foods Inc.*

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

CERTIFICATE OF SERVICE

I, David E. Moore, hereby certify that on August 22, 2008, the attached document was electronically filed with the Clerk of the Court using CM/ECF which will send notification to the registered attorney(s) of record that the document has been filed and is available for viewing and downloading.

I further certify that on August 22, 2008, the attached document was Electronically Mailed to the following person(s):

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Exhibit 1

Page 1

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF DELAWARE

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3 KEURIG, INCORPORATED,
4 Plaintiff,
-against-

5 KRAFT FOODS GLOBAL, INC., TASSIMO CORPORATION &
6 KRAFT FOODS, INC.,
7 Defendants.

-----X

8
9
10 555 South Broadway
11 Tarrytown, New York 10591

12 March 5th, 2008
13 2:00 p.m.

14
15 Videotaped Deposition of the Defendant,
16 by: GERALDINE A. GRETO, held pursuant to Court
17 Order, at the above time and place, before Notary
18 Public of the State of New York.

19
20
21
22
23 ELLEN GRAUER COURT REPORTING CO. LLC
24 126 East 56th Street, Fifth Floor
25 New York, New York 10022
212-750-6434
REF: 86864

			Page 2	Page 4
1	APPEARANCES:			
2	WOLF, GREENFIELD & SACKS, P.C.		PLAINTIFF'S DESCRIPTION	PAGE
3	Attorneys for the Plaintiff		Exhibit 103 Document Bates stamped K0017271	73
4	600 Atlantic Avenue		Exhibit 104 Document Bates stamped	
5	Boston, Massachusetts 02210-2206		K00170307-8	74
6	BY: GERALD B. HRYCYSZYN, ESQUIRE			
7			Exhibit 105 Document Bates stamped	
8			K0017260-261	81
9	BAKER BOTTS, LLP		Exhibit 106 Document Bates stamped	
10	Attorneys for the Defendants		K0017226-229	84
11	1299 Pennsylvania Avenue NW			
12	Washington, DC 20004		Exhibit 107 Document Bates stamped K0017159	84
13	BY: DAVID SCHLITZ, ESQUIRE			
14			Exhibit 108 Document Bates stamped	
15	THOMAS MARCOUX, ESQUIRE		K0017252-253	86
16	Senior Patent Counsel		Exhibit 109 Document Bates stamped	
17	Kraft Foods		K0017467-468	88
18	555 South Broadway			
19	Tarrytown, New York 10591			
20	ALSO PRESENT:			
21	FRED ESPOSITO, Videographer			
22				
23				
24				
25				
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1	INDEX			
2	WITNESS EXAMINATION BY	PAGE		
3	GERALDINE A. GRETO MR. SCHLITZ	7		
4				
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9	Exhibit 76 Document Bates stamped			
10	K0017258-259	22		
11	Exhibit 77 Document Bates stamped K0017236	25		
12	Exhibit 78 Document Bates stamped K0017262	26		
13	Exhibit 79 Document Bates stamped K0017241	29		
14	Exhibit 80 Document Bates stamped K0017240	30		
15	Exhibit 81 Document Bates stamped K0017239	32		
16	Exhibit 82 Document Bates stamped			
17	K0017238-251	32		
18	Exhibit 83 Document Bates stamped K0017266	35		
19	Exhibit 84 Document Bates stamped K0017265	36		
20	Exhibit 85 Document Bates stamped K0017269	37		
21	Exhibit 86 Document Bates stamped K0017272	38		
22	Exhibit 87 Document Bates stamped K0017253	40		
23	Exhibit 88 Document Bates stamped K0017246	42		
24	Exhibit 89 Document Bates stamped K0017273	43		
25	Exhibit 90 Document Bates stamped K0017248	46		

PROCEEDINGS		Page 6	Page 8
1	* * * *		
2	VIDEOPHAGER: This is tape one.		
3	We're now on the record at 2:00 p.m.,		
4	Wednesday, March 5th, 2008.		
5	This is the opening of the		
6	deposition of Geraldine A. Greto, in		
7	the matter of Keurig, Incorporated		
8	versus Kraft Foods. This deposition is		
9	being held at Kraft Foods.		
10	The court reporter is Lisa Regen,		
11	with Ellen Grauer Court Reporting. I'm		
12	the legal videographer, Fred Esposito		
13	with Ellen Grauer. Counsel, please		
14	introduce themselves.		
15	MR. SCHLITZ: My name is David		
16	Schlitz from the law firm of Baker		
17	Botts. And I represent the Kraft		
18	defendants.		
19	MR. HRYCYSZN: Gerry Hrycysz		
20	with Wolf Greenfield. I represent		
21	Keurig, Incorporated.		
22	MR. MARCOUX: Thomas Marcoux. I'm		
23	in-house counsel at Kraft Foods.		
24	VIDEOPHAGER: Will the court		
25			
reporter please swear in the witness?		Page 7	Page 9
1	GERALDINE A. GRETO,		
2	having been duly sworn by Notary		
3	Public Lisa Regen, upon examination,		
4	testified as follows:		
5	THE REPORTER: Please state your		
6	full name and address for the record.		
7	THE WITNESS: Geraldine A. Greto,		
8	65 Arthur Court, Port Chester, New York		
9	10573.		
10	EXAMINATION BY		
11	MR. SCHLITZ:		
12	Q Ms. Greto, I know that you're		
13	nervous about this deposition. Just relax and		
14	listen to the questions. Just answer the questions		
15	to the best of your knowledge. And if you want to		
16	take a break at any time, feel free to do so. If		
17	you want some water, just let us know.		
18	In 1994, by whom were you		
19	employed?		
20	A Kraft Foods.		
21	Q And at what Kraft Foods location		
22	were you employed?		
23	A White Plains.		
24			
25			
GRETO			
1	Q Is that White Plains in the State		
2	of New York?		
3	A Yes, White Plains, New York.		
4	Q And for whom did you work?		
5	A Bill Craig.		
6	Q Now, did there come a time in		
7	1994, when there was a Kenco Singles Machine at		
8	White Plains?		
9	A Yes.		
10	Q Do you know approximately when in		
11	1994?		
12	A I think it was September.		
13	Q Okay, now did you keep a file with		
14	regard to the Kenco Singles Machine and Kenco		
15	Singles Cartridges?		
16	A Yes.		
17	Q Where did you keep that file?		
18	A In the file drawer, right next to		
19	my chair where I sit.		
20	Q And you did so as part of your		
21	work?		
22	A Is it part of my work?		
23	Q Yes.		
24	A Yes.		
25			
GRETO			
1	Q Did you provide the contents of		
2	that file to Kraft's attorney for production in this		
3	case?		
4	A Yes.		
5	MR. SCHLITZ: This would be		
6	Defendant's Exhibit 74.		
7	(Whereupon Defendant's Exhibit 74		
8	- document Bates stamped K0017256 was		
9	marked for identification.)		
10	Q Ms. Greto, I'd ask you to take a		
11	moment to look at the document.		
12	A Yes.		
13	Q Is this one of the documents that		
14	came out of the file we just mentioned?		
15	A Yes.		
16	Q Now, it's dated September 14th,		
17	1994; is that correct?		
18	A Uh-huh.		
19	Q And at the bottom -- it is in		
20	memorandum form. It says, from Bill Craig.		
21	Do you see that?		
22	A Yes.		
23	Q And it says, at GF White Plains.		
24	What is GF White Plains?		
25			

<p style="text-align: right;">Page 18</p> <p>1 GRETO 2 you had three twenty cartridges; right? 3 A Yes. 4 Q You already had from previous 5 cartridges you have eighty in stock; is that 6 correct? 7 A Yes. 8 Q Okay, and since each case has a 9 hundred and sixty, you had used by this point June, 10 '95, you used at least eighty; is that correct, of 11 the medium roast? 12 A Yes, that's correct. 13 Q Now, if you turn to the next page, 14 0017255, you see at the top, it says, "had as of" 15 and then six. It seems like you have inserted a 16 number five there? 17 A Yes, I think I realized I should 18 have put the date. And that means the fifth, I 19 think. 20 Q So June 5th, 1995? 21 A Uh-huh. 22 Q And so, when you look at the 23 front page where you say 6/95, you had ordered and 24 received as of six -- June 5th, 1995, these -- 25 A What I asked for.</p>	<p style="text-align: right;">Page 20</p> <p>1 GRETO 2 Q Was the kitchen or pantry locked? 3 A No. 4 Q And in fact, as you said, the 5 cleaning crew could come in at night and have access 6 to them? 7 A Certainly. 8 Q Any visitors could have access? 9 A Yes, they could. 10 Q And in fact, all the employees? 11 A Yes. 12 Q And you have testified that you 13 personally used the coffee cartridges in '94, 14 '95, '96, '97 and '98? 15 A Right. 16 Q Now, when you -- at any time, 17 during that period, '94, to '98, were you under any 18 obligation of secrecy or confidentiality with regard 19 to the Kraft Kenco Singles coffee cartridges? 20 A No. 21 Q And again, I apologize, stating 22 the obvious. But were you under any obligation of 23 secrecy or confidentiality with regard to those 24 cartridges to a company called Keurig? 25 A No.</p>
<p style="text-align: right;">Page 19</p> <p>1 GRETO 2 Q -- right. Okay. Now, the Kenco 3 Singles machine in White Plains, where was it kept? 4 A In the pantry, where the 5 refrigerator is, and the sink, and the counter is 6 and that. 7 Q And you may have already answered 8 this, but who had access to that pantry? 9 A All the employees, plus any 10 visitors that came to visit, plus any repair men 11 that came to visit, and in the evening, the cleaning 12 people. 13 Q And were the Kenco Singles 14 cartridges out in the open? 15 A Yes. I used to put them in a 16 little basket, variety. 17 Q You used to? 18 A Yes. 19 Q Stating the obvious, it was not -- 20 they were not in a locked drawer? 21 A No, it was not locked. 22 Q And they weren't -- and was there 23 any attempt to keep the Singles cartridges secret in 24 any way? 25 A No.</p>	<p style="text-align: right;">Page 21</p> <p>1 GRETO 2 Q There are two inventors named with 3 regard to the patent in suit, a Mr. Lazarus and a 4 Mr. Bolio. First of all, have you ever heard of 5 these two people? 6 A No. 7 Q Okay, were you under any 8 obligation of confidentiality of secrecy to these 9 two people -- 10 A No. 11 Q -- with regard to the Kraft 12 cartridges? 13 A No. 14 Q Did you ever see others use -- you 15 have testified that you personally used the Kraft 16 singles cartridges for coffee. Were you under any 17 other obligation to others -- excuse me, did you 18 ever see others use the Kraft singles cartridges? 19 A Yes. 20 Q Can you identify anybody that you 21 saw? 22 A My co-employees, whatever area I 23 was working in. Jennifer Guthrie, Debbie 24 Robastelli, Bill Craig. 25 Q Bill Craig, you saw Mr. Craig use</p>

<p>1 GRETO</p> <p>2 them?</p> <p>3 A Yes.</p> <p>4 (Whereupon Defendant's Exhibit 76</p> <p>5 - document Bates stamped K0017258 was</p> <p>6 marked for identification.)</p> <p>7 Q Ms. Greto, if you first take the</p> <p>8 time to look at Defendant's Exhibit 76, which is</p> <p>9 K0017259, and 0017258.</p> <p>10 A Yes.</p> <p>11 Q Do you see that?</p> <p>12 A Yes.</p> <p>13 Q First, at the bottom of this, it</p> <p>14 says Bill/GG. Are those your initials?</p> <p>15 A That's me.</p> <p>16 Q So did you prepare this document</p> <p>17 and sign it?</p> <p>18 A Yes.</p> <p>19 Q And did this document come out of</p> <p>20 your files?</p> <p>21 A Yes.</p> <p>22 Q It says, "Ted, I'd like to get a</p> <p>23 Michigan machine here in the United States for</p> <p>24 demonstration purposes."</p> <p>25 A Right.</p>	<p>1 GRETO</p> <p>2 A Yes.</p> <p>3 Q The second paragraph says, "Is</p> <p>4 there a problem with modifying this machine and</p> <p>5 sending me one in White Plains (rather than</p> <p>6 Tarrytown as previously requested)." You see that?</p> <p>7 A Yes.</p> <p>8 Q So in fact, this is the machine</p> <p>9 that we spoke about earlier. It was delivered to</p> <p>10 White Plains, not Tarrytown; is that correct?</p> <p>11 A Yes.</p> <p>12 Q Now, and I believe you just</p> <p>13 answered this. But I need to make sure. In fact,</p> <p>14 you saw -- did you ever see Mr. Craig demonstrate</p> <p>15 this machine to visitors?</p> <p>16 A I don't know if I was actually</p> <p>17 there watching him demonstrate it. But I know</p> <p>18 whoever came to visit him, he took them to the</p> <p>19 pantry, and let's have a cup of coffee. Look at</p> <p>20 this great machine.</p> <p>21 (Whereupon Defendant's Exhibit</p> <p>22 77 - document Bates stamped K0017236</p> <p>23 was marked for identification.)</p> <p>24 Q I show you Defendant's Exhibit</p> <p>25 77. Did this come out of your files?</p>
<p>1 GRETO</p> <p>2 Q Do you know what that means, "for</p> <p>3 demonstration purposes?"</p> <p>4 A We weren't going to sell or</p> <p>5 anything. We were just going to use it.</p> <p>6 Q Right, but did --</p> <p>7 A For us.</p> <p>8 Q -- did Mr. Craig demonstrate the</p> <p>9 machine and show it to visitors?</p> <p>10 A Yes.</p> <p>11 Q Now, this page it says, May 16 --</p> <p>12 excuse, me. It says the May 16, 1994 document says</p> <p>13 "How can I buy one and have it converted to run on</p> <p>14 one ten volts as a plug in unit and receive it in</p> <p>15 Tarrytown?" Do you see that?</p> <p>16 A Yes.</p> <p>17 Q Then if you turn to the next page,</p> <p>18 which is dated August 29, 1994. You see that?</p> <p>19 A Right.</p> <p>20 Q Again it says Bill/GG. Are those</p> <p>21 your initials?</p> <p>22 A Yes, it is.</p> <p>23 Q Did you prepare this document?</p> <p>24 A Yes, I did.</p> <p>25 Q Did you sign it?</p>	<p>1 GRETO</p> <p>2 A Yes.</p> <p>3 Q There is some handwritten notes on</p> <p>4 there. Can you identify whose handwriting that is?</p> <p>5 A That's mine.</p> <p>6 Q Can you read them and explain them</p> <p>7 to us?</p> <p>8 A "3/17 received only one box of</p> <p>9 espresso, no inside said will forward one more and</p> <p>10 two cappi ASAP." And then I wrote, "3/20 received</p> <p>11 one espresso and one cappi." This is the way I'm</p> <p>12 interpreting, and still need one more cappi. That</p> <p>13 is not what it says. But that is what I'm</p> <p>14 interpreting.</p> <p>15 Q Okay, you said it's not what is</p> <p>16 says?</p> <p>17 A Well, it's still nees.</p> <p>18 Q Yes, still need one cappi?</p> <p>19 A Still need one cappi.</p> <p>20 Q But in fact, these are your</p> <p>21 contemporaneous notes saying that on March 17th, you</p> <p>22 did receive a box of espresso; is that right?</p> <p>23 A Yes.</p> <p>24 Q And on March 20th, you received</p> <p>25 one box of espresso and one box of capuccino. Is</p>

GRETO		GRETO
1	that correct?	2 cartridges per bag, which equals a hundred and sixty
2	A Yes.	3 cartridges." You see that?
3	Q And then, if you go down to this	4 A Right.
4	document, it is -- they were being sent to White	5 Q So, that is something you counted
5	Plains, New York; is that correct?	6 and noted?
6	A Yes.	7 A Right.
7	(Whereupon Defendant's Exhibit 78	8 Q So, if you go down, and we see,
8	- document Bates stamped K0017241 was	9 medium roast, it says cartons, two. So this, here
9	marked for identification.)	10 you're ordering two cartons; is that right?
10	Q Okay, I show you Defendant's	11 A Right.
11	Exhibit 77, which is K0017262. Is this a document	12 Q Half/bag you had forty -- you had
12	that came out of your files?	13 four bags in stock; is that right?
13	A Yes.	14 A Yes.
14	Q And it is dated what?	15 Q And thus you had eighty
15	A May 16th, 1995.	16 cartridges; is that right?
16	Q And it's to a Pat Nunn. Do you	17 A Right.
17	know who Pat Nunn is?	18 Q And since one carton has eight
18	A She was the secretary at Kraft,	19 bags and a hundred sixty cartridges, from this you
19	Jacobs Suchard, in Banbury that I mostly or KJS,	20 know that the users had used at least eighty of the
20	whatever you want to call it. And she was kind of	21 medium roast cartridges; is that correct?
21	like my contemporary. She worked for the research	22 A That's correct.
22	and development person over there.	23 (Whereupon Defendant's Exhibit 79
23	Q Now, it says from, and then where	24 - document Bates stamped K0017241 was
24	the highlighting it, but can you --	25 marked for identification.)
GRETO		GRETO
1	A That is me because that means that	2 Now, this is dated May 16th,
2	is my file copy. And I highlight it. One went to	3 1995, okay. Then I'm going to show you the next
3	Bill. I always put it in his thing to show him that	4 document, Defendant's 79. This is also dated May
4	I did it.	5 16th, 1995. You see at the top?
5	Q And again, cross out says at KF	6 A Yes.
6	White Plains?	7 Q And it's from you; is that
7	A Now, we became Kraft, GF to KF.	8 correct?
8	Q KF means Kraft Foods?	9 A Yes.
9	A Right.	10 Q Can you see decipher this for me
10	Q And then White Plains is the	11 and tell me what it says?
11	location?	12 A I think it's saying that this fax
12	A Correct.	13 that I sent, this as the cover sheet, didn't go
13	Q And that is in New York State;	14 through. I kept having a problem.
14	right?	15 Q Okay?
15	A New York, White Plains, New York.	16 A Try again.
16	Q Now, first line of the text says,	17 Q So you -- the fax that you had
17	"Project Michigan is a great success here. And our	18 tried to send for Defendant's Exhibit 77, hadn't
18	supply is dwindling." What do you mean, our supply	19 gone through; right?
19	is dwindling?	20 A That's what this says, yes.
20	A Everybody loved to use that	21 Q So then, now I take it from that,
21	machine. And we were running out of cartridges, so	22 you monitored. You didn't just send these things.
22	I had to keep ordering them.	23 You monitored if they went through, et cetera; is
23	Q And then you have in handwriting,	24 that right?
24	it say, "one carton equals eight bags, equals twenty	25 A I always followed up, yes.

Exhibit 2

Page 1

1 UNITED STATES DISTRICT COURT
2 FOR THE DISTRICT OF DELAWARE

-----X

3 KEURIG, INC.,

4 Plaintiff,

5 - against -

6 KRAFT FOODS GLOBAL, TASSIMO CORPORATION,
7 KRAFT FOODS INTERNATIONAL,

8 Defendants.

9 C.A. NO. 07-17 GMS

-----X

10
11 120 Park Avenue
12 New York, New York

13
14 March 4, 2008

15
16 2:00 P.M.

17 Examination Before Trial of HELEN GLUS,
18 pursuant to Notice, taken by and before Renee
19 S. Harris, a Notary Public and Shorthand
Reporter of the State of New York.

20
21
22
23 ELLEN GRAUER COURT REPORTING CO. LLC
24 126 East 56th Street, Fifth Floor
25 New York, New York 10022
26 212-750-6434
27 REF: 86800

		Page 2			Page 4
1	APPEARANCES:		1	EXHIBITS (Cont'd)	
2			2	DEFENDANT'S DESCRIPTION	PAGE
3	BAKER BOTTS		3	Exhibit 68	45
4	Attorneys for Defendants		4	Exhibit 69	46
5	1299 Pennsylvania Ave, NW		5	Exhibit 70	47
6	Washington, DC 20004		6	Exhibit 71	49
7	BY: DAVID M. SCHLITZ, ESQ.		7	Exhibit 72	50
8			8	Exhibit 73	51
9			9	PLAINTIFF'S	PAGE
10	WOLF GREENFIELD		10	Exhibit 101	63
11	Attorneys for Plaintiffs		11	Coffee pack	
12	600 Atlantic Avenue		12		
13	Boston, Massachusetts 02210		13		
14	BY: GERALD HRYCYSZYN, ESQ.		14		
15	ALSO PRESENT: CLINTON HALLMAN, KRAFT		15		
16			16		
17			17		
18			18		
19			19		
20			20		
21			21		
22			22		
23			23		
24			24		
25			25		
		Page 3			Page 5
1	INDEX		1	STIPULATIONS	
2	WITNESS	EXAMINATION BY	2		
3	HELEN GLUS	MR. SCHLITZ	6		
4			3	IT IS HEREBY STIPULATED AND AGREED	
5			4	by and between the attorneys for the	
6	EXHIBITS		5	respective parties herein, that filing,	
7	DEFENDANT'S DESCRIPTION		6	sealing and certification be and the	
8	Exhibit 50	K001722-23	18	same are hereby waived.	
9	Exhibit 51	K001721	20		
10	Exhibit 52	K0017219	20	IT IS FURTHER STIPULATED AND	
11	Exhibit 53	K0017218	24	AGREED that all objections, except as to	
12	Exhibit 54	K0017217	26	the form of the question, shall be	
13	Exhibit 55	K0017216	26	reserved to the time of the trial.	
14	Exhibit 56	K0017214	29	IT IS FURTHER STIPULATED AND	
15	Exhibit 57	K0017212	30	AGREED that the within deposition may be	
16	Exhibit 58	K0017204	32	signed and sworn to before any officer	
17	Exhibit 59	K0017202	33	authorized to administer an oath, with	
18	Exhibit 60	K0017203	34	the same force and effect as if signed	
19	Exhibit 61	K0017201	37	and sworn to before the Court.	
20	Exhibit 62	K0017199	37		
21	Exhibit 63	K0017200	37		
22	Exhibit 64	K0017197	39		
23	Exhibit 65	K0017191	41		
24	Exhibit 66	K0017196	42		
25	Exhibit 67	K0017192	43		

<p style="text-align: right;">Page 6</p> <p>1 H E L E N G L U S, having first been duly 2 sworn by a Notary Public for and within the 3 State of New York, upon being examined, 4 testified as follows:</p> <p>5</p> <p>6 EXAMINATION BY 7 MR. SCHLITZ:</p> <p>8 Q. Please state your name for the 9 record.</p> <p>10 A. Helen Glus. 123 Mamaroneck Avenue, 11 Mamaroneck, New York, 10543.</p> <p>12 Q. I'm going to have to ask you to 13 speak up a little bit so we can all hear.</p> <p>14 Mrs. Glus, who do you currently work 15 for?</p> <p>16 A. Louis Camilleri, chairman and CEO of 17 Altria Group, Inc.</p> <p>18 Q. Did you ever work for Kraft Foods?</p> <p>19 A. Yes, the international division.</p> <p>20 Q. Okay. And can you tell me the dates 21 that you worked for Kraft Foods?</p> <p>22 A. Mr. Camilleri was transferred there 23 on December '95, and we stayed there till 24 August '96.</p> <p>25 Q. And you say "there"; where is there?</p>	<p style="text-align: right;">Page 8</p> <p>1 GLUS 2 to it?</p> <p>3 A. Yes.</p> <p>4 Q. We've talked about there was a Kenco 5 singles machine. Were there capsules for use 6 with the Kenco singles machine at the same 7 location?</p> <p>8 A. Yes.</p> <p>9 Q. Did you personally use those Kenco 10 singles capsules?</p> <p>11 A. Yes.</p> <p>12 Q. How often did you use them?</p> <p>13 A. Every day, seven times a day, at 14 least three times a day.</p> <p>15 Q. And you mentioned that you arrived 16 in December '95, there already was a machine; 17 and did you start using it in December of 18 '95?</p> <p>19 A. Yes.</p> <p>20 Q. And did you continue to use it 21 through August '96?</p> <p>22 A. Yes.</p> <p>23 Q. Let me ask the question first, and 24 wait if you would, please.</p> <p>25 Did you ever see anyone else use the</p>
<p style="text-align: right;">Page 7</p> <p>1 GLUS 2 A. The Rye Brook office of Kraft Foods 3 International.</p> <p>4 Q. And is that in New York State?</p> <p>5 A. Westchester.</p> <p>6 Q. Westchester, New York State?</p> <p>7 A. Mm-hmm.</p> <p>8 Q. And when you arrived at the offices 9 of Kraft Foods International Rye Brook, was 10 there a single-serve beverage machine there?</p> <p>11 A. Yes, there was.</p> <p>12 Q. Do you know what brand it was?</p> <p>13 A. We referred to it as the Kenco 14 machine.</p> <p>15 Q. Where was the Kenco machine that 16 you're referring to, where was that in the 17 building?</p> <p>18 A. On the seventh -- on my half of the 19 seventh floor in the kitchen.</p> <p>20 Q. Who had access to that machine?</p> <p>21 A. Everyone.</p> <p>22 Q. Everyone, meaning?</p> <p>23 A. Everyone who worked on that floor 24 who came to that floor, visited that floor.</p> <p>25 Q. Now did you personally have access</p>	<p style="text-align: right;">Page 9</p> <p>1 GLUS 2 Kenco singles capsules?</p> <p>3 A. Yes.</p> <p>4 Q. Now I'm going to ask you to dig way 5 back, and I appreciate we're talking about 6 December '95. But do you remember the 7 flavors of beverage that you used of the 8 singles -- of the Kenco's singles cartridges 9 that you used?</p> <p>10 A. Tea, medium roast. Those are the 11 two I used.</p> <p>12 Q. Okay. And again, I understand it's 13 been a while, but can you describe the 14 appearance of the Kenco's singles cartridge 15 that you started to use in December of 1995?</p> <p>16 A. Can I use my hands?</p> <p>17 Q. Yes.</p> <p>18 A. It's about that long, about that 19 wide, square (indicating). I don't remember 20 if the top, the part that you inserted, was 21 more rounded or maybe came more to a point.</p> <p>22 Each one had a different label on the front 23 for what the product was.</p> <p>24 Q. And do you remember what the bottom 25 looked like?</p>

<p style="text-align: right;">Page 10</p> <p>1 GLUS</p> <p>2 A. The foil, but that's all I remember.</p> <p>3 Q. And recently, have you seen the</p> <p>4 Kenco's singles cartridge?</p> <p>5 A. Yes.</p> <p>6 Q. How recently?</p> <p>7 A. A month ago.</p> <p>8 Q. And was there any difference in the</p> <p>9 appearance of what you saw a month ago from</p> <p>10 what you --</p> <p>11 A. To me they looked exactly the same.</p> <p>12 Q. When you say "they," meaning what</p> <p>13 you started to use in December '95?</p> <p>14 A. Yes.</p> <p>15 Q. Now, with regard to the Kenco's</p> <p>16 singles cartridges that you were using from</p> <p>17 December 1995 to August 1996, in Rye Brook --</p> <p>18 we're going to separate the two times: One</p> <p>19 is Rye Brook and one is here in Park Avenue.</p> <p>20 Were you under any obligation of</p> <p>21 confidentiality or secrecy with anyone with</p> <p>22 regard to the Kenco's singles cartridges?</p> <p>23 A. No.</p> <p>24 Q. To your knowledge were the other</p> <p>25 uses under any obligation of confidentiality</p>	<p style="text-align: right;">Page 12</p> <p>1 GLUS</p> <p>2 A. No.</p> <p>3 Q. Thereafter, was there a Kenco's</p> <p>4 single machine?</p> <p>5 A. Yes.</p> <p>6 Q. Do you know how soon thereafter?</p> <p>7 A. Within months.</p> <p>8 Q. Okay. And were you responsible for</p> <p>9 ordering that machine?</p> <p>10 A. I was in the loop, but I believe it</p> <p>11 was a phone call between my boss and I</p> <p>12 believe Ronny Bell, but he told him that he</p> <p>13 wanted a machine shipped here.</p> <p>14 Q. And when the machine arrived, did</p> <p>15 there also arrive Kenco's singles cartridges</p> <p>16 for use in the machine?</p> <p>17 A. Yes, there was an initial supply</p> <p>18 delivery.</p> <p>19 Q. Where was that machine located?</p> <p>20 A. In the kitchen area on this floor.</p> <p>21 Q. "This floor" being --</p> <p>22 A. The 22nd floor.</p> <p>23 Q. The 22nd floor. That kitchen area,</p> <p>24 who had access to it?</p> <p>25 A. Everybody -- everybody. It's for</p>
<p style="text-align: right;">Page 11</p> <p>1 GLUS</p> <p>2 or secrecy to anyone with regard to the</p> <p>3 Kenco's singles cartridges?</p> <p>4 A. No.</p> <p>5 Q. More specifically, were you under</p> <p>6 any obligation of confidentiality or secrecy</p> <p>7 to a company called Keurig, the inventor,</p> <p>8 employees of Keurig?</p> <p>9 A. No.</p> <p>10 Q. Were you free to show the cartridges</p> <p>11 to anyone you wanted to show them to?</p> <p>12 A. Yes.</p> <p>13 Q. Now, after August 1996, did you</p> <p>14 change companies that you worked for?</p> <p>15 A. Yes, Mr. Camilleri was given a new</p> <p>16 position, senior vice president and chief</p> <p>17 financial officer for Philip Morris</p> <p>18 Companies, Inc., so we moved back to 120</p> <p>19 Park.</p> <p>20 Q. And when you moved back -- when was</p> <p>21 that?</p> <p>22 A. If I can look, August '96.</p> <p>23 Q. In August '96, when you arrived at</p> <p>24 120 Park Avenue, on the floor that you worked</p> <p>25 on, was there a Kenco's singles machine?</p>	<p style="text-align: right;">Page 13</p> <p>1 GLUS</p> <p>2 the purpose of the people on this floor, but</p> <p>3 for everybody who came on the floor.</p> <p>4 Q. That would be other employees of</p> <p>5 Kraft in the building -- excuse me, of</p> <p>6 employers in the building?</p> <p>7 A. Yes.</p> <p>8 Q. Visitors to the building?</p> <p>9 A. Yes.</p> <p>10 Q. And I asked you about the machine,</p> <p>11 were there capsules, Kenco's singles</p> <p>12 capsules, for use within that machine in the</p> <p>13 same location?</p> <p>14 A. Yes.</p> <p>15 Q. And were they out in public view?</p> <p>16 A. Yes, they were in a storage kind of</p> <p>17 view.</p> <p>18 Q. Okay. Now, in 1996, did you ever</p> <p>19 personally use the Kenco's singles capsules?</p> <p>20 A. Yes.</p> <p>21 Q. Again, how often?</p> <p>22 A. At least three times a day.</p> <p>23 Q. In 1997, did you use the Kenco's</p> <p>24 singles capsules?</p> <p>25 A. Yes.</p>

<p>1 GLUS</p> <p>2 Q. In 1998?</p> <p>3 A. Yes.</p> <p>4 Q. And in 1999?</p> <p>5 A. Yes.</p> <p>6 Q. Now, did you ever see others use the</p> <p>7 Kenco's singles cartridges in 1996?</p> <p>8 A. Yes.</p> <p>9 Q. In 1997?</p> <p>10 A. Yes.</p> <p>11 Q. In 1998?</p> <p>12 A. Yes.</p> <p>13 Q. In 1999?</p> <p>14 A. Yes.</p> <p>15 Q. And can you -- and I know this is a</p> <p>16 difficult question, but can you remember</p> <p>17 anybody that else that used them?</p> <p>18 A. All my coworkers on the floor at the</p> <p>19 time, definitely. Other people who would</p> <p>20 come up for meetings, outsiders who came for</p> <p>21 meetings. Everybody used it.</p> <p>22 Q. When you say "outsiders" that came</p> <p>23 to meetings, to your knowledge did any</p> <p>24 visitors, non-Kraft employees, ever view and</p> <p>25 use the Kenco's singles machine?</p>	<p>Page 14</p> <p>1 GLUS</p> <p>2 A. No.</p> <p>3 Q. Did anyone ever say to you: Helen,</p> <p>4 you're free to use these cartridges, but you</p> <p>5 can't tell anybody about the cartridges?</p> <p>6 A. No.</p> <p>7 Q. Were your coworkers under any</p> <p>8 obligation of confidentiality or secrecy with</p> <p>9 regard to the use of Kenco's singles?</p> <p>10 A. No.</p> <p>11 Q. This may seem obvious, but were you</p> <p>12 under any obligation of confidentiality or</p> <p>13 secrecy with regard to the Kenco's singles</p> <p>14 cartridges -- did you have any obligation of</p> <p>15 confidentiality or secrecy to Keurig?</p> <p>16 A. No.</p> <p>17 Q. Did you have any obligation of</p> <p>18 confidentiality or secrecy to a Mr. Lazarus,</p> <p>19 who is one of the inventors of the patent</p> <p>20 suit?</p> <p>21 A. No.</p> <p>22 Q. What about to his co-inventor?</p> <p>23 A. I don't know who these people are,</p> <p>24 no.</p> <p>25 Q. But you didn't have any obligation</p>
---	---

<p>1 GLUS</p> <p>2 A. Yes.</p> <p>3 Q. Can you describe under which</p> <p>4 circumstances that might have happened?</p> <p>5 A. Well, they would visit Mr.</p> <p>6 Camilleri. If you knew the layout of the</p> <p>7 floor, Mr. Camilleri's office at the time was</p> <p>8 by the kitchen, and his conference room was</p> <p>9 opposite the kitchen.</p> <p>10 So if people were there to meet with him</p> <p>11 and he wasn't available, I would say: Do you</p> <p>12 want to go to conference room; would you like</p> <p>13 coffee; we would go along the way. We had</p> <p>14 such a variety, so you would ask them what</p> <p>15 they want.</p> <p>16 Q. Now, we talked about each of the</p> <p>17 years '97, '98, '99, your personal use of the</p> <p>18 Kenco's singles capsules, do you remember</p> <p>19 what flavors you used?</p> <p>20 A. I used medium roast or regular tea.</p> <p>21 Q. Now, at any time in '96, '97, '98,</p> <p>22 '99, were you under any obligation of</p> <p>23 confidentiality or secrecy with regard to the</p> <p>24 Kenco's singles cartridges and the use of</p> <p>25 them?</p>	<p>Page 15</p> <p>1 GLUS</p> <p>2 of confidentiality or secrecy?</p> <p>3 A. No.</p> <p>4 Q. Now did there come a time when you</p> <p>5 were responsible for ordering the Kenco's</p> <p>6 singles cartridges for use in the machine on</p> <p>7 the 22nd floor?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. Now did you keep a file with</p> <p>10 regard to those orders?</p> <p>11 A. Yes.</p> <p>12 Q. And where did you keep that file?</p> <p>13 A. In my desk drawer.</p> <p>14 Q. Did you provide copies of the</p> <p>15 documents in that file to Kraft's attorneys</p> <p>16 in this case to be produced in this case?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. I'm going to show you some</p> <p>19 documents, if you would please hand this to</p> <p>20 the court reporter. Now,</p> <p>21 I don't know what the last defense</p> <p>22 exhibit is in Banbury, but I know it was</p> <p>23 certainly not up to 50.</p> <p>24 So let's mark this defendant's exhibit</p> <p>25 50.</p>
--	---

<p>1 GLUS 2 (A DOCUMENT WAS RECEIVED AND MARKED 3 DEFENDANT'S EXHIBIT 50, 4 IN EVIDENCE, AS OF THIS DATE.)</p> <p>5 Q. Can you take a second to look at the 6 document?</p> <p>7 A. Yes.</p> <p>8 Q. Can you describe what this document 9 is?</p> <p>10 A. It's a fax to me from Mr. Halliday 11 just saying how happy we were with the 12 machine and asking for more boxes of product.</p> <p>13 Q. Now, first of all, did this document 14 come out of your file?</p> <p>15 A. Yes, it did.</p> <p>16 Q. At the top there is a Philip Morris 17 letterhead. Is this the letterhead that 18 you --</p> <p>19 A. At the time it was my standard fax 20 cover sheet.</p> <p>21 Q. Okay. And this is dated November 6, 22 1996; is that right?</p> <p>23 A. That's right.</p> <p>24 Q. Do you have any reason to believe 25 this was not sent about November 6, 1996?</p>	<p>1 GLUS 2 said, we got an initial supply, but it was 3 going like crazy. So I had to reorder more 4 stock.</p> <p>5 Q. When you say were "going like 6 crazy," what do you mean, going like crazy?</p> <p>7 A. People were using it all day long.</p> <p>8 Q. Now, it says: "I'd appreciate it if 9 you could arrange for the following favorites 10 to be sent to us on 120 Park Avenue." And 11 you list Kenco traditional leaf tee, Kenco 12 medium roast, Kenco's espresso. Were these 13 the favorite flavors?</p> <p>14 A. At the time they were the favorites, 15 the best-selling.</p> <p>16 (A DOCUMENT WAS RECEIVED AND MARKED 17 DEFENDANT'S EXHIBIT 51, 18 IN EVIDENCE, AS OF THIS DATE.)</p> <p>19 Q. Okay. Now I'm going to show you a 20 next document, Defendant's Exhibit 51. At 21 the bottom right-hand corner, litigation 22 number we call Bates Nos. 2321; what is this 23 document?</p> <p>24 A. This appears to me to be a letter 25 from Liz Matthews saying she is sending the</p>
<p>1 GLUS 2 A. It was sent.</p> <p>3 Q. Okay. Now, you say it was sent. 4 Now you look at the next page, K0017223; what 5 is this page?</p> <p>6 A. That's the transmission report from 7 the fax machine.</p> <p>8 Q. So this show that is it was --</p> <p>9 A. That it went through; that the 10 transmission was okay.</p> <p>11 Q. Now, looking at the message itself, 12 it says, "Dear Mr. Halliday, I don't know if 13 Lewis mentioned it in his phone call, but the 14 machine is a big success."</p> <p>15 What do you mean, a big success?</p> <p>16 A. That everyone on the machine thought 17 it was the greatest thing since sliced bread.</p> <p>18 Q. "Everyone on the machine," everyone 19 on the --</p> <p>20 A. Everyone on the floor.</p> <p>21 Q. "So much so that we are ready to 22 re-order certain items after a short time."</p> <p>23 What do you mean reorder certain items 24 after a short time?</p> <p>25 A. Well, I believe it came -- as I</p>	<p>1 GLUS 2 product along with the capsule storage unit 3 and that she would let me know when the 4 products were going to arrive and to let her 5 know when I needed more.</p> <p>6 Q. And this is dated November 7, 1996; 7 is that correct?</p> <p>8 A. That's correct.</p> <p>9 Q. Which if you look at Defendant's 10 Exhibit 50 is one day after you requested the 11 product; is that correct?</p> <p>12 A. Yes.</p> <p>13 Q. And this facsimile is addressed to 14 you; is that correct?</p> <p>15 A. That's correct.</p> <p>16 Q. And did this facsimile come out of 17 your files?</p> <p>18 A. Yes, it did.</p> <p>19 Q. Now, when you made orders, did you 20 stay on top of whether they are delivered or 21 not?</p> <p>22 A. I tried to.</p> <p>23 Q. And if you made an order and it 24 didn't come, did you do anything?</p> <p>25 A. I'm sure I would have e-mailed them</p>

<p style="text-align: right;">Page 22</p> <p>1 GLUS 2 or called them. 3 Q. So you have no reason to believe 4 that this wasn't -- 5 A. Well, I know it came because I would 6 have had a lot of people to answer to if it 7 didn't. So I know when I ordered, I got a 8 product.</p> <p>9 (A DOCUMENT WAS RECEIVED AND MARKED 10 DEFENDANT'S EXHIBIT 52, 11 IN EVIDENCE, AS OF THIS DATE.)</p> <p>12 Q. Now, handing you -- if you would 13 look at Defendant's Exhibit 52 which is 14 K0017219 through K0017220, would you tell me 15 what these documents are?</p> <p>16 A. Again another fax to Ms. Matthews 17 asking for more product. 18 As I said, the earlier one where we had 19 just those three items, the choices expanded. 20 So we needed more, another cartridge, another 21 storage unit to hold all the cartridges, so I 22 asked for another one of those. And then 23 there was a question about billing that 24 Mr. Kepler had. 25 Q. Now it says here: "I was told it</p>	<p style="text-align: right;">Page 24</p> <p>1 GLUS 2 didn't have enough. 3 Q. When you say "we were running out," 4 would people have used -- when you look at 5 the previous exhibit, which is dated November 6 6, 1996, you had ordered nine boxes of 7 cartridges. 8 A. Right. 9 Q. Now, this is three months later, 10 February 4, 1996; so almost three months 11 later. 12 Had people been using the cartridges and 13 the nine boxes that you had received? 14 A. Yes. 15 Q. Here you are requesting 16 more 16 boxes; is that correct? 17 A. That's right. 18 (A DOCUMENT WAS RECEIVED AND MARKED 19 DEFENDANT'S EXHIBIT 53, 20 IN EVIDENCE, AS OF THIS DATE.) 21 Q. Show you Defendant's Exhibit 53, 22 K0017218, can you tell me what this is? 23 A. This is Liz's reply to me from the 24 previous exhibit saying that the arrangements 25 for the product and the storage unit were</p>
<p style="text-align: right;">Page 23</p> <p>1 GLUS 2 might be helpful for you to indicate on the 3 shipping documents and the name and phone 4 number of our broker, which is Martin 5 Strauss." 6 Do you see that? 7 A. Yes. 8 Q. Is that correct that you were the 9 international broker for bringing things into 10 customs to Martin Strauss? 11 A. Yes, it was. 12 Q. Now, the next page which is 220, 13 what is this? 14 A. Again, it's a fax transmission 15 sheet. 16 Q. Now, where you say: "Dear Liz," and 17 it says, "it's that time again." 18 What do you mean, "it's that time 19 again?" 20 A. I always took -- time for me to be a 21 pest and order more product. 22 Q. And again, I apologize. It may seem 23 obvious, but why are you ordering more 24 product? 25 A. Because we were running out and we</p>	<p style="text-align: right;">Page 25</p> <p>1 GLUS 2 being made; two of them were out of stock; 3 and that we weren't going to be billed. 4 Q. Okay. So it says: "We are making 5 arrangements for the product and capsules of 6 the storage unit to be sent to you. There 7 may be some delay in getting the carte 8 noire," c-a-r-t-e, and then n-o-i-r-e, and 9 then the Kronung, K-r-o-n-u-n-g, products. 10 Do you see that? 11 A. Yes. 12 Q. Now, if you look at the dates, 13 Defendant's Exhibit 52 and Defendant's 14 Exhibit 53. Defendant's Exhibit 52 where 15 you've ordered the 16 boxes dated February 4, 16 1997, and this is dated, what? 17 A. February 5, 1997. 18 Q. So a day later? 19 A. Yes. 20 Q. So you ordered them on February 4 21 and you got a reply on February 5, that they 22 were being sent to you? 23 A. Yes. 24 (A DOCUMENT WAS RECEIVED AND MARKED 25 DEFENDANT'S EXHIBIT 54,</p>

<p>1 GLUS</p> <p>2 IN EVIDENCE, AS OF THIS DATE.)</p> <p>3 Q. Can you tell me what this is,</p> <p>4 Defendant's Exhibit 54, which is K0017217;</p> <p>5 what is this document?</p> <p>6 A. It's a fax from Liz Matthews telling</p> <p>7 me that the products listed were being sent</p> <p>8 to me on February 15; plus the capsule</p> <p>9 storage unit and the flight details and the</p> <p>10 other two products were going to be produced</p> <p>11 and dispatched the following week.</p> <p>12 Q. Okay. And did this document come</p> <p>13 from your files?</p> <p>14 A. Yes, it did.</p> <p>15 (A DOCUMENT WAS RECEIVED AND MARKED</p> <p>16 DEFENDANT'S EXHIBIT 55,</p> <p>17 IN EVIDENCE, AS OF THIS DATE.)</p> <p>18 Q. Please look at Defendant's Exhibit</p> <p>19 55 which is K0017216. Do you see that?</p> <p>20 A. Yes, I do.</p> <p>21 Q. First of all, did this document come</p> <p>22 from your files?</p> <p>23 A. Yes, it did.</p> <p>24 Q. Can you tell me what this document</p> <p>25 is?</p>	<p>1 GLUS</p> <p>2 two boxes of dark roast, and you see on</p> <p>3 Defendant's Exhibit 55, it says dark roast</p> <p>4 coffee; what is the quantity?</p> <p>5 A. Two.</p> <p>6 Q. And then on Defendant's Exhibit 54,</p> <p>7 it says two boxes of traditional tea, and on</p> <p>8 Defendant's Exhibit 55, it says traditional</p> <p>9 tea; how many, the quantity?</p> <p>10 A. Two.</p> <p>11 Q. And then on defendant's 54, it says</p> <p>12 two boxes of earl gray tea, and then on</p> <p>13 Defendant's Exhibit 55, it says earl gray</p> <p>14 tea; what quantity?</p> <p>15 A. Two.</p> <p>16 Q. Then we go to cappuccino, three</p> <p>17 boxes; and boxes of cappuccino and on</p> <p>18 Defendant's Exhibit 55, we have how many</p> <p>19 boxes?</p> <p>20 A. Three.</p> <p>21 Q. Defendant's Exhibit 54, we have two</p> <p>22 boxes of espresso; and Defendant's Exhibit</p> <p>23 55, we have espresso, how many?</p> <p>24 A. Two.</p> <p>25 (A DOCUMENT WAS RECEIVED AND MARKED</p>
<p>1 GLUS</p> <p>2 A. I don't really know what officially</p> <p>3 this document is called. I don't know if</p> <p>4 it's a bill of lading or an invoice; I don't</p> <p>5 know.</p> <p>6 Q. If you look at the date, it is dated</p> <p>7 February 13, 1997; is that correct?</p> <p>8 A. Yes.</p> <p>9 Q. And if you look at the date of the</p> <p>10 previous exhibit, Defendant's Exhibit 54,</p> <p>11 that's likewise dated February 13, 1997; is</p> <p>12 that correct?</p> <p>13 A. Yes.</p> <p>14 Q. Now, if you look at the previous</p> <p>15 exhibit, it has one box of medium -- it says:</p> <p>16 "The following product is being dispatched</p> <p>17 from the U.K. on Saturday, 15 February." It</p> <p>18 says one box of medium roast; do you see</p> <p>19 that?</p> <p>20 A. Yes.</p> <p>21 Q. From Defendant's Exhibit 55, do you</p> <p>22 see medium roast coffee, quantity, what is</p> <p>23 that?</p> <p>24 A. One.</p> <p>25 Q. And on Defense Exhibit 51, it says</p>	<p>1 GLUS</p> <p>2 DEFENDANT'S EXHIBIT 56,</p> <p>3 IN EVIDENCE, AS OF THIS DATE.)</p> <p>4 Q. Now, show you Defendant's Exhibit</p> <p>5 56, which is K0017214.</p> <p>6 Do you have that in front of you?</p> <p>7 A. Yes.</p> <p>8 Q. Did this come out of your files?</p> <p>9 A. Yes.</p> <p>10 Q. Now, is this addressed to you?</p> <p>11 A. Yes.</p> <p>12 Q. And this is dated March 10, 1997; is</p> <p>13 that correct?</p> <p>14 A. Yes.</p> <p>15 Q. And it is a bill for two types of</p> <p>16 Kenco singles cartridges; can you read what</p> <p>17 they are?</p> <p>18 A. French dark coffee and Kronung.</p> <p>19 Q. Now, if you look, go back to</p> <p>20 Defendant's Exhibit 54 -- excuse me. Just go</p> <p>21 back to Defendant's Exhibit 52, the bottom of</p> <p>22 the list of order, you have two boxes of</p> <p>23 carte noire?</p> <p>24 A. Yes.</p> <p>25 Q. And two boxes of Kronung; is that</p>

<p>1 GLUS</p> <p>2 right?</p> <p>3 A. Yes.</p> <p>4 Q. Now, if you then go to Defendant's</p> <p>5 Exhibit 54, can you tell us what Ms. Matthews</p> <p>6 told you in this document?</p> <p>7 A. That they were being produced</p> <p>8 tomorrow, the 14th of February, and that they</p> <p>9 will be dispatched by DHL early the next</p> <p>10 week.</p> <p>11 Q. So now going to Defendant's Exhibit</p> <p>12 56, does this reflect that those two flavors</p> <p>13 were dispatched to you?</p> <p>14 A. Yes.</p> <p>15 (A DOCUMENT WAS RECEIVED AND MARKED</p> <p>16 DEFENDANT'S EXHIBIT 57,</p> <p>17 IN EVIDENCE, AS OF THIS DATE.)</p> <p>18 Q. Now, I'm going to show you</p> <p>19 Defendant's Exhibit 57, which is K0017212.</p> <p>20 And can you tell me what -- first, did this</p> <p>21 document come from your files?</p> <p>22 A. Yes.</p> <p>23 Q. And midway about a third down, it</p> <p>24 says: "Attention, Helen Glus."</p> <p>25 Do you see that?</p>	<p>1 GLUS</p> <p>2 Q. And to whose attention?</p> <p>3 A. Mine.</p> <p>4 (A DOCUMENT WAS RECEIVED AND MARKED</p> <p>5 DEFENDANT'S EXHIBIT 58,</p> <p>6 IN EVIDENCE, AS OF THIS DATE.)</p> <p>7 Q. Now, I show you Defendant's Exhibit</p> <p>8 58, which is K0017204, through K0017206.</p> <p>9 A. Okay.</p> <p>10 Q. Can you tell us me, first of all,</p> <p>11 did this document come out of your files?</p> <p>12 A. Yes.</p> <p>13 Q. Now below it says: "Kind regards,</p> <p>14 Helen." Is that you?</p> <p>15 A. Yes.</p> <p>16 Q. So did you send this?</p> <p>17 A. Yes, I did.</p> <p>18 Q. And what is this document?</p> <p>19 A. Another request for product.</p> <p>20 Q. Okay. If you would look back to</p> <p>21 Defendant's Exhibit 54 -- excuse me,</p> <p>22 Defendant's Exhibit 52, it's dated February</p> <p>23 4, 1997, and you said there were 16 boxes</p> <p>24 ordered; correct?</p> <p>25 A. Yes.</p>
<p>Page 31</p>	<p>Page 33</p>

Exhibit 3

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Page 1

1

2

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE

4

KEURIG INCORPORATED :
5 :
Plaintiff : Civil Action No.
6 : 07-017 GMS
v :
7 :
KRAFT FOODS GLOBAL, INC :
8 TASSIMO CORPORATION, and :
KRAFT FOODS INC, :
9 Defendants :
10 :
11 VIDEOTAPED DEPOSITION UPON ORAL EXAMINATION
12 OF
13 JANICE APPLETON
14 On Thursday, 21st February 2008
15
16 Commencing at 9.12 am
17
18 Taken at:
19 Best Western Banbury House Hotel
Oxford Road
Banbury
Oxfordshire
OX16 9AH
United Kingdom
20
21
22
23
24 Reported by: Miss Pamela Henley
25

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Page 2	Page 4
1 2 3 4 5 6 On behalf of the Plaintiff: 7 Wolf, Greenfield & Sacks, PC 8 600 Atlantic Avenue 9 Boston, MA 02210 10 BY: Michael N Rader	1 Confidential - Attorneys' Eyes Only 2 JANICE APPLETON 3 having been duly sworn 4 was examined and did testify as follows 5 DIRECT EXAMINATION: 6 BY MR RADER: Good morning, Ms Appleton. My name 7 is Mike Rader and we met briefly off the record. 8 Just a couple of preliminaries before I ask you 9 some questions; have you ever had your deposition 10 taken before? 11 A. No. 12 Q. A couple of preliminaries then. 13 First, I think you know this, but I will just need 14 to ask you to make sure you answer all my 15 questions verbally rather than, for example, 16 nodding your head so that the court reporter can 17 get down your answers, okay? 18 A. Yes. 19 Q. Now, Mr Schlitz probably told you 20 this, but I want to make sure you understand, if 21 he objects to a question that I ask you unless he 22 for some reason instructs you not to answer it do 23 you understand that notwithstanding the objection 24 you will still need to provide a response? 25 A. I do.
19 Court Reporter: 20 21 Pamela Henley 22 Marten Walsh Cherer Limited 23 6th Floor 24 12-14 New Fetter Lane 25 London EC4A 1LT	
Page 3	Page 5
1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 1 INDEX 2 DEPONENT 3 Janice Appleton 4 Examination: Page No: 5 Direct Examination by Mr Rader 4 EXHIBIT INDEX 10 Number Page No: 11 1 23 12 2 62 13 3 64 14 4 66 15 Defendant's 16 1 81	1 Confidential - Attorneys' Eyes Only 2 Q. Okay. And last if at any point you 3 need to take a break, run to the bathroom or get 4 something to drink will you let me know? 5 A. Yes, I will. 6 Q. Are you feeling all right today and 7 ready and prepared to give your best testimony? 8 A. Yes, I am fine, thank you. 9 Q. I do not expect this to take too 10 long, I think an hour or maybe two should be 11 enough. 12 Ms Appleton, are you a current 13 Kraft employee? 14 A. Yes, I am. 15 Q. At what Kraft facility do you work? 16 A. I work in the Banbury office of 17 Kraft. 18 Q. What is the full name of your 19 employers? Is it just Kraft or is it some other 20 name? 21 A. Just Kraft Foods. 22 Q. How long have you worked at Kraft 23 Foods? 24 A. 20 years permanently and nearly 21 25 because I worked nine months as a temporary

2 (Pages 2 to 5)

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<p>1 Confidential - Attorneys' Eyes Only 2 Q. You mentioned that you had some 3 responsibility, again we are still on the 4 purchasing of the system rolls, you mentioned you 5 had some responsibility in the distribution or 6 shipping area; is that of the singles machines? 7 A. Yes. 8 Q. And not the cartridges? 9 A. We tended to utilise as far as 10 France, Germany and Spain were concerned if we did 11 not have full truck loads they would either put 12 the request to ship the equipment if that was not 13 a full trip load, I would ask them to utilise with 14 product if they had any to shift. 15 Q. By "product" you mean the 16 cartridges? 17 A. Yes. 18 Q. Then would you then actually 19 co-ordinate them getting the product? Did your 20 role extend any further beyond that in terms of 21 the cartridges? 22 A. Not as far as France, Germany and 23 Spain. 24 Q. What about any other countries? 25 A. The USA.</p>	Page 22	Page 24
<p>1 Confidential - Attorneys' Eyes Only 2 Q. What was your role with regard to 3 singles cartridges in the US? 4 A. Reference some of the documents it 5 came through the vending director's secretary, a 6 request for me to ship some product. 7 Q. Was that a regular part of your job 8 or just something that you did to help her out? 9 A. I suppose it was not within the 10 normal procedure, so it was -- I would not say it 11 was not my job to do it, but I would not say it 12 was the normal way that we shipped product coming 13 through me. 14 Q. My understanding from reviewing the 15 documents, and I will put them in front of you in 16 a second, but my understanding is that when you 17 made those shipments to the US there was no 18 payments in return for those; is that right? 19 A. I think some of them were free of 20 charge. I am not quite sure if all of them were. 21 Q. We will look at those in 22 particular. Let us start doing that now actually. 23 I am going to ask the court reporter to mark this 24 as Plaintiff's Exhibit 1. 25 (Exhibit 1 marked for identification)</p>	Page 23	Page 25
		<p>1 Confidential - Attorneys' Eyes Only 2 thought it would be convenient. 3 MR SCHLITZ: Okay. 4 By MR RADER: 5 Q. So, Ms Appleton, I will just start 6 on the first page; is this document on the first 7 page a document that is familiar to you? 8 A. Yes. 9 Q. In your own words can you describe 10 what this document is? 11 A. This is a fax from my predecessor, 12 Martina Clauzing, to our export department to 13 arrange shipment of brewer and some cup stacks, 14 some capsules. 15 Q. So when you say "your predecessor" 16 you are referring to in the position of purchasing 17 and assisting? 18 A. She was the one who was on 19 maternity leave. 20 Q. And so you took over from her some 21 time in 1995? 22 A. 1995. 23 Q. Now, just to make sure I understand 24 the date correctly, this is December 1st 1994, 25 this fax?</p>

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	Page 26	Page 28
1 Confidential - Attorneys' Eyes Only 2 A. Yes. 3 Q. We do it differently in the States. 4 A. Yes, you do. 5 Q. Now, my understanding, at least 6 from counsel, is that this document came from 7 files that were described as being your files; is 8 that correct? 9 A. Yes, that is correct. 10 Q. Now, obviously, this is not a 11 document that you created, right? 12 A. No. 13 Q. It is -- it was created and sent at 14 a time when you were not yet in the position we 15 have been speaking about, right? 16 A. Yes. 17 Q. So can you just describe what -- 18 where you located this document? 19 A. In my filing cabinet that I 20 inherited from my predecessor. 21 Q. Where is that filing cabinet 22 located? 23 A. At the side of my desk. 24 Q. That is obviously in your office in 25 the Banbury facility?		<p>1 Confidential - Attorneys' Eyes Only 2 A. In that particular drawer it is -- 3 each of the files is a country. So wherever I 4 have shipped to, or had any dealings with any 5 country then there is the country's name on each 6 of those files. 7 Q. You say it is things that you have 8 shipped to a country; is it just singles 9 cartridges or other things that you may have 10 shipped at -- 11 A. Other things. 12 Q. -- is that a system, a filing 13 system that you inherited from Ms Clausing? 14 A. I suppose, yes, and I have put my 15 own spin on it, I suppose. 16 Q. How so? 17 A. Well, I am not sure she kept every 18 country. I do not know whether she kept them in 19 the format that I keep them in. 20 Q. Do you recall what it looked like 21 when you inherited it from her? 22 A. No, I am afraid I do not. 23 Q. Was there a USA file at the time 24 you took over the -- 25 A. Oh, yes, there has always been a</p>
1 Confidential - Attorneys' Eyes Only 2 A. Well, it is open plan. I do not 3 have an office. 4 Q. Is that -- I think that is what we 5 referred as cubicles; do you use that word? 6 A. We refer to it as open plan because 7 we are not partitioned off at all. The -- 8 MR SCHLITZ: Just desks. It is a 9 big room. 10 A. Desks within an area. 11 BY MR RADER: 12 Q. And next to your desk you have a 13 filing cabinet and that is where you found the 14 documents? 15 A. Yes. 16 Q. Was it inside a file that was 17 labelled in any way? 18 A. It is in the hangers that you put 19 in there and it is filed USA. 20 Q. So the file just says "USA"? 21 A. Yes. 22 Q. Can you just describe, broadly, in 23 that filing cabinet, and this may seem like a very 24 detailed set of questions, but what types of 25 documents are in that filing cabinet, in general?	Page 27	<p>1 Confidential - Attorneys' Eyes Only 2 USA file. 3 Q. -- now, it says here at the top of 4 the page "Kraft Jacobs Suchard", did I pronounce 5 that correctly? 6 A. Jacobs. 7 Q. What is that? 8 A. Jabobs is the German coffee, as 9 Kenco is UK Jacobs is German. 10 Q. Is that -- I take it this is... 11 A. That is what the company was called 12 at one time. 13 Q. So was Ms Clausing an employee of 14 Kraft Jacobs Suchard? 15 A. Yes. As was I. 16 Q. So even though you were located in 17 the UK technically at the time you were in the 18 planning and logistics division you were an 19 employee of the German -- 20 A. No, that was just the name of the 21 company at the time. We started off as General 22 Foods. Then we had a name change, I think it was 23 as we -- as the company obtained certain other 24 companies like Suchard that was the name that we 25 had at the time, Kraft Jacobs Suchard and then we</p>

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<p>1 Confidential - Attorneys' Eyes Only 2 became Kraft Foods. 3 Q. -- and then below that it says 4 Maxpax International; what does that refer to? 5 A. That is what the -- half of the 6 away from home business was called at the time, 7 Maxpax. It was simply known as Maxpax. And that 8 is the in cup and the singles side. 9 Q. Is that the programme that you 10 referred to earlier where they get the machine for 11 free? 12 A. No, Maxpax was the logo that the 13 vending machines, the input vending machines were 14 known as. They were quite innovative at the time 15 that they were created, the Maxpax machines, 16 because of the -- how it produced the cup of 17 coffee, which was in cup. The product was in the 18 cup and the water filled it. 19 Previous to that most vending 20 machines had a tube that the coffee came down and 21 sometimes you could get half a cup of coffee and 22 half a cup of soup, whichever you had, and that 23 was the way vending machines worked. So Maxpax was 24 the company that created the -- this particular 25 type of vending machine.</p>	<p>Page 30</p> <p>1 Confidential - Attorneys' Eyes Only 2 are they the people who would actually take 3 whatever the item is, put it in a box, get it to 4 the -- 5 A. No, they would liaise with 6 transport agencies. 7 Q. -- so in this kind of situation who 8 would actually go get the thing to be shipped, the 9 singles cartridges or whatever, put it in a box 10 and ship it; who would actually do that physical 11 labour? 12 A. The capsules in the box would be 13 done by the factory because they are produced and 14 created as finished goods in a box and they would 15 sit in our finished goods warehouse on the Banbury 16 site. The machines would be in our distribution 17 warehouse, which at this time was possibly 18 Hatfield in Hertfordshire, and so an order would 19 be put on the system to arrange the shipment, and 20 the guy in the warehouse would pick that order and 21 it would be loaded on to a container, the 22 transport company would go in and collect. 23 Q. So in a situation like the one we 24 have been talking about, where an order was placed 25 for a certain amount of product to be sent to the</p>
<p>Page 31</p> <p>1 Confidential - Attorneys' Eyes Only 2 Q. I see, okay. And you are referring 3 to the in cup vending machine? 4 A. Yes. 5 Q. Who is Sue Stephenson? 6 A. Sue Stephenson was a person that 7 worked in our export department at the time and 8 she was responsible for shipping. 9 Q. What about Caroline Walley? 10 A. She also worked there. I am 11 assuming that as it went to both of them I am not 12 quite sure whether Caroline may have been on 13 maternity leave at that time or whether she had 14 just come back, hence Sue or Caroline. 15 Q. And since they are sending a fax my 16 assumption would that be these people are working 17 at a different facility; is that right? 18 A. They are in the same office block, 19 but possibly on a different floor. 20 Q. So is this the precursor to e-mail? 21 A. Yes, very much so. 22 Q. Send a fax to someone working on 23 another floor? 24 A. Yes. 25 Q. When you say they were in shipping,</p>	<p>Page 33</p> <p>1 Confidential - Attorneys' Eyes Only 2 United States, would it be Ms Stephenson and 3 Ms Walley who would communicate to someone in the 4 warehouse what needed to be sent? Is that how it 5 would work? 6 A. Yes, they would liaise with the 7 transport agency and possibly the warehouse. In 8 actual fact at this time I think we would have had 9 a certain amount of product in the warehouses, the 10 distribution warehouses, and that would be -- 11 depending on where the deliveries needed to go 12 post code wise as to how many boxes or cases of 13 that product would be in the warehouse. 14 A little bit the same as the 15 equipment where we need to ensure that we have a 16 sufficient amount of machines to cover our 17 forecasts then they would need to ensure that they 18 had a sufficient amount of cases of equipment to 19 go out to the customers. 20 Q. So let me ask you a couple more 21 questions about this document. In the middle of 22 the page in the listing of product to be shipped 23 there is a reference and it says one Spanish 24 brewer; do you see that? 25 A. Yes.</p>

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<p style="text-align: right;">Page 34</p> <p>1 Confidential - Attorneys' Eyes Only 2 Q. What does that refer to? 3 A. That is a singles brewer with 4 Spanish branding. 5 Q. Were there other types of branding 6 as well at the time? 7 A. UK branding, French branding, 8 German branding. 9 Q. Do you have any idea why a Spanish 10 brewer was chosen here? 11 A. Possibly because we had one in 12 stock. 13 Q. Were the machines, to your 14 knowledge, any different, or was it just -- 15 A. No, it is just branding. 16 Q. -- okay. Then there is a list of 17 one case each of various types of coffee; do you 18 see that? 19 A. Yes. 20 Q. I assume those are cases of singles 21 cartridges? 22 A. Yes. 23 Q. And they are supposed to go to a 24 Mr David Yuile; did I pronounce that right? 25 A. I do not know. I do not know the</p>	<p style="text-align: right;">Page 36</p> <p>1 Confidential - Attorneys' Eyes Only 2 against something and that was the vending 3 director's sample budget number. 4 Q. So you would have to -- sort of on 5 an ad hoc basis have some way of accounting it 6 within a company? 7 A. Yes. 8 Q. Now, do you have any idea why 9 Mr Yuile was getting a free brewer and free 10 singles cartridges? 11 A. No. 12 Q. Ms Clausing did not tell you when 13 she transferred the job to you -- 14 A. No. 15 Q. -- and the cases of singles 16 cartridges and the brewer that were -- let me see. 17 Let me back up for a minute. Do you know whether 18 the singles cartridges that Ms Clausing requested 19 here were ever actually sent to Mr Yuile? 20 A. Well, the fact that we have put the 21 request to Sue one assumes that if he did not 22 receive them he would have requested that and 23 followed it up because he was obviously expecting 24 them. 25 Q. Now, you were not in the position</p>
<p style="text-align: right;">Page 35</p> <p>1 Confidential - Attorneys' Eyes Only 2 man. 3 MR SCHLITZ: You did pronounce it 4 right 5 BY MR RADER: 6 Q. Did you ever have any contact with 7 Mr Yuile? 8 A. No. 9 Q. Never spoken with him? 10 A. No. 11 Q. Then below that it says the items 12 are to be sent free of charge; do you have any 13 idea why that was so? 14 A. No, not really. They were put 15 against a sample budget number which shows below. 16 Q. Do you know why Ms Clausing did 17 that? 18 A. Well, when she passed that on to me 19 all she said was this was how we ship this kind of 20 thing. The sample budget number I think belonged 21 to the vending director. So I think you had to 22 pay for the goods from the factory so you could 23 not have goods from the factory free of charge so 24 although we were sending them to the USA free of 25 charge they had to be charged from the factory</p>	<p style="text-align: right;">Page 37</p> <p>1 Confidential - Attorneys' Eyes Only 2 at that time where he would have contacted you 3 about that, right? 4 A. No. 5 Q. So do you have any -- did you find 6 in your files any documents that confirmed that 7 this shipment actually went? 8 A. No. 9 Q. Did you find any notes from 10 Ms Clausing or any other documents at all that 11 would corroborate that he received the shipment? 12 A. No. 13 Q. Now, if the cartridges were 14 shipped, the singles cartridges that are listed 15 here, they would have been inside a case; is that 16 right? 17 A. Yes. 18 Q. In other words, one case each of 19 these different types? 20 A. Yes. 21 Q. What do those cases look like? Was 22 it cardboard? 23 A. Cardboard cases. Yes. The capsules 24 are in like a kind of laminate sleeve, and then 25 there are so many sleeves in a box. I am not</p>

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<p style="text-align: right;">Page 38</p> <p>1 Confidential - Attorneys' Eyes Only 2 quite sure of the number. 3 Q. But the term "case" would refer to 4 the box? 5 A. Yes. 6 Q. Okay. And that box is sealed up at 7 the factory? 8 A. In the factory, yes. 9 Q. Did you -- well, obviously, you 10 were not in the position, but just to confirm, did 11 you ever actually see the cases that would have 12 been sent to Mr Yuile? 13 A. No. 14 Q. Would Ms Clausing have actually 15 seen those cases and seen the box that was being 16 shipped -- 17 A. No. 18 Q. -- would Ms Stephenson and 19 Ms Walley have actually seen the shipment itself? 20 A. No. 21 Q. So the only person who would have 22 seen what was shipped would have been the person 23 at the factory? 24 A. The man who would pick the shipment 25 at the distribution warehouse.</p>	<p style="text-align: right;">Page 40</p> <p>1 Confidential - Attorneys' Eyes Only 2 product shipped? 3 A. Yes. 4 Q. In all the cases where you placed 5 these types of requests you never actually saw the 6 boxes that were shipped? 7 A. No. 8 Q. You did not take them to DHL or 9 FedEx or something like that? 10 A. No. 11 THE COURT REPORTER: Would you wait 12 until Mr Rader has finished his question before 13 you answer. 14 THE WITNESS: Sorry. 15 BY MR RADER: 16 Q. The next page is K17157. Is this 17 another page that you inherited from Ms Clausing? 18 A. Yes. That is the request from Andy 19 Wiggins to ship the first page. 20 Q. Now, I am sorry, I may have asked 21 you, but who is Andy Wiggins? 22 A. He was, I am not quite sure what 23 his title was, but he worked in equipment 24 development at that time. It was called equipment 25 development.</p>
<p style="text-align: right;">Page 39</p> <p>1 Confidential - Attorneys' Eyes Only 2 Q. Okay. 3 A. The man produces them at the 4 factory, they are in cases. Those cases get 5 shipped on a regular basis to the distribution 6 warehouses, and this shipment would have been 7 arranged with the distribution warehouse with a 8 transport company to come in and collect a pallet. 9 If you see at the side there it has one pallet, so 10 the brewer, and one each of those cases would have 11 been picked and strapped to a pallet and then the 12 transport agency would come in and collect that 13 pallet. 14 Q. So somehow Ms Stephenson and 15 Ms Walley would have communicated to that person? 16 A. Yes. 17 Q. Do you know whether that type of 18 thing was done by fax or by phone? 19 A. I do not. I do not know their 20 order system and I do not know whether it works 21 the same as it works now. 22 Q. Was it the same at a later time 23 when you were making these sorts of requests, was 24 it a similar kind of procedure where you would 25 place a request to someone else who would get the</p>	<p style="text-align: right;">Page 41</p> <p>1 Confidential - Attorneys' Eyes Only 2 Q. Do you have any idea why he placed 3 this request with Ms Clausing? 4 A. No, I do not. 5 Q. Did Ms Clausing ever come back from 6 maternity leave? 7 A. No. 8 Q. So she is not with the company now? 9 A. No. 10 Q. Do you know if Mr Wiggins is at the 11 company now? 12 A. No. 13 Q. I should phrase that again so it is 14 not confusing. Is Mr Wiggins at the company now? 15 A. No. 16 Q. My fault. Now, the next page is 17 K17518. Can you describe what this document is? 18 A. This is a fax, again to 19 Sue Stephenson, to arrange a shipment to the USA. 20 Q. So this would have proceeded in a 21 similar fashion where she would have made 22 arrangements with someone in shipping? 23 A. Yes. 24 Q. And the date here is August 14th 25 1995?</p>

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2	A. Yes.	2	previously instructed by my predecessor that this
3	Q. It says here -- is this your	3	is how we dealt with this kind of thing.
4	handwriting, by the way?	4	Q. When you say "this kind of thing" I
5	A. It is, yes.	5	want to make sure I understand because all of
6	Q. It says here the shipment was to	6	these documents centre around a certain set of
7	arrive no later than Wednesday, August 23rd 1995;	7	circumstances where you are sending some product
8	do you see that?	8	to the United States. When you say "this kind of
9	A. Yes.	9	thing" is there any kind of name that you would
10	Q. Why was that?	10	put to this activity within your business?
11	A. That was the request that I had	11	A. Possibly I would just refer to them
12	from the following page.	12	as ad hoc shipments, you know, on request.
13	Q. Okay. So the next page, that is	13	Q. Meaning it was not part of any
14	K17159, is that a request that you got from	14	regular programme, but just something you did if
15	Doug Halliday?	15	you happened to get a request?
16	A. Yes.	16	A. Yes.
17	Q. Who was Doug Halliday?	17	Q. Now, for this August 14th 1995
18	A. He was the vending director for	18	order did you receive any confirmation from
19	Maxpax International at that time.	19	Ms Stephenson or from shipping that the shipment
20	Q. And he asked you to make a delivery	20	was actually sent?
21	to Mr Craig in New York?	21	A. No, it does not look like it.
22	A. Yes.	22	Q. Did you receive any confirmation
23	Q. Who was Mr Craig?	23	from Mr Craig that he received it?
24	A. Group Research Director Maxwell	24	A. No.
25	House Division.	25	Q. Did he get anything from -- well,
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1	Confidential - Attorneys' Eyes Only	1	Confidential - Attorneys' Eyes Only
2	Q. Did you ever meet Mr Craig?	2	let me back up. Do you know which shipping
3	A. No.	3	service you used?
4	Q. Talk to him on the phone?	4	A. No, I do not on this occasion. It
5	A. No.	5	does normally say on the invoice if we do receive
6	Q. Any contact with him?	6	a copy of the invoice. But I have written on the
7	A. No.	7	bottom to Sue Stephenson: "Can you please advise
8	Q. Did Mr Halliday explain why the	8	shipment departure and arrival times" simply
9	product was to be shipped to Mr Craig?	9	because this one was going airfreight. So I would
10	A. No.	10	assume that I would have received that possibly --
11	Q. Did he tell you what Mr Craig was	11	could have been by e-mail, which I have not kept.
12	going to do with the product?	12	Q. Do you have any recollection as you
13	A. No.	13	sit here today of getting that confirmation?
14	Q. Did he tell you if Mr Craig had a	14	A. No.
15	singles machine somewhere in his facility?	15	Q. Okay. Let us move on to the next
16	A. No.	16	one, K17160. This is another fax from you to
17	Q. Now in Mr Halliday's memo to you he	17	Ms Stephenson dated April 2nd, 1996?
18	did not tell you how to make that intracompany	18	A. Yes.
19	charge, did he?	19	Q. This was for a shipment to a Ms
20	A. No.	20	Helen Glus; is that right?
21	Q. You charged it against the same	21	A. Yes.
22	sample budget number?	22	Q. Who is Ms Glus?
23	A. Yes.	23	A. I am not quite sure what her title
24	Q. How did you decide to do that?	24	was actually.
25	A. Because that is what I was	25	Q. Did you have occasion to speak with

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<p>1 Confidential - Attorneys' Eyes Only</p> <p>2 her directly?</p> <p>3 A. No.</p> <p>4 Q. Or meet with her?</p> <p>5 A. No.</p> <p>6 Q. Do you know why -- on this occasion</p> <p>7 do you know who requested that you make the</p> <p>8 shipment to Ms Glus?</p> <p>9 A. I would say Liz Matthews again who</p> <p>10 was Doug Halliday's secretary because I have put</p> <p>11 at the bottom there: "Can you let me know details</p> <p>12 to pass to Liz Matthews".</p> <p>13 Q. Okay. Do you recall the</p> <p>14 conversation with Ms Matthews about this?</p> <p>15 A. No.</p> <p>16 Q. I realise it was a long time ago.</p> <p>17 A. Yes.</p> <p>18 Q. Do you recall if she told you why</p> <p>19 this shipment was being made?</p> <p>20 A. No.</p> <p>21 Q. Did she tell you anything about</p> <p>22 whether Ms Glus had a singles machine or where it</p> <p>23 was or how she was using it?</p> <p>24 A. No.</p> <p>25 Q. Again, the actual cases -- let me</p>	<p>1 Confidential - Attorneys' Eyes Only</p> <p>2 A. I do not recall at all what we had.</p> <p>3 Q. Do you nowadays, let us talk about</p> <p>4 nowadays.</p> <p>5 A. Yes.</p> <p>6 Q. Do you drink singles coffee?</p> <p>7 A. No, I drink singles tea.</p> <p>8 Q. Okay. Have you ever drunk singles</p> <p>9 coffee?</p> <p>10 A. Yes.</p> <p>11 Q. So you are a coffee drinker?</p> <p>12 A. Occasionally, yes.</p> <p>13 Q. Do you recall when was the first</p> <p>14 time that you had occasion to drink a cup of</p> <p>15 singles brew coffee?</p> <p>16 A. It would have been probably at the</p> <p>17 launch of the singles brewer in the UK. I do not</p> <p>18 know what date that was, to be honest.</p> <p>19 Q. Do you recall when you first got a</p> <p>20 singles machine on the landing or anywhere else at</p> <p>21 the office that you used?</p> <p>22 A. No, I do not recall at all.</p> <p>23 Q. I do not think it is part of your</p> <p>24 job description, but I just need to confirm a</p> <p>25 couple of things; do you have any involvement at</p>
<p style="text-align: center;">Page 47</p> <p>1 Confidential - Attorneys' Eyes Only</p> <p>2 back up for a second. It says "3 cases of" and</p> <p>3 then there is an identification number; do you see</p> <p>4 that?</p> <p>5 A. Yes.</p> <p>6 Q. Does that refer to a particular</p> <p>7 flavour of singles cartridges?</p> <p>8 A. It is medium roast.</p> <p>9 Q. So you recognise these numbers?</p> <p>10 A. Yes.</p> <p>11 Q. And, again, those cases would have</p> <p>12 been shipped by someone that Ms Stephenson</p> <p>13 contacted?</p> <p>14 A. Yes.</p> <p>15 Q. You did not see the box or anything</p> <p>16 like that?</p> <p>17 A. No.</p> <p>18 Q. Back at the time in 1995, '96 in</p> <p>19 your office where you worked did you have a</p> <p>20 singles brewer?</p> <p>21 A. I think we have our vending</p> <p>22 equipment on the landing of each floor for the use</p> <p>23 of all of the people on each floor.</p> <p>24 Q. Did you have that -- do you recall</p> <p>25 whether you had at the time, '95/96?</p>	<p style="text-align: center;">Page 49</p> <p>1 Confidential - Attorneys' Eyes Only</p> <p>2 all with design of cartridge products?</p> <p>3 A. No.</p> <p>4 Q. Over the years at Kraft have you</p> <p>5 ever been involved with engineering or technical</p> <p>6 design for singles cartridges for example?</p> <p>7 A. No.</p> <p>8 Q. Have you ever studied the technical</p> <p>9 features of singles cartridges?</p> <p>10 A. No. Only from an interest point of</p> <p>11 view, how does it work.</p> <p>12 Q. In terms of -- when you say how</p> <p>13 does it work, can you flesh that out a little bit</p> <p>14 more?</p> <p>15 A. Well, I think it was -- I did a</p> <p>16 factory visit and saw the capsules being produced</p> <p>17 and so you see the tea going in and the little</p> <p>18 channel round the outside that the water goes</p> <p>19 round and then it punctures and the water floods</p> <p>20 in and brews through.</p> <p>21 Q. So did you ever take a singles</p> <p>22 cartridge in your hand and carefully study it for</p> <p>23 any product features or technical aspects or</p> <p>24 anything like that?</p> <p>25 A. Only as a matter of interest,</p>

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<p>1 Confidential - Attorneys' Eyes Only</p> <p>2 peeling the top off to see how it works.</p> <p>3 Q. Are you familiar at all with</p> <p>4 changes to the design of the singles cartridge</p> <p>5 over time or anything like that?</p> <p>6 A. No.</p> <p>7 Q. When you use a singles cartridge</p> <p>8 today or when you have used them to insert them</p> <p>9 into a machine did you study them at all, or were</p> <p>10 you mainly interested in putting it in a machine</p> <p>11 to make a cup of coffee?</p> <p>12 A. Mainly interested in a cup of tea</p> <p>13 or a cup of coffee.</p> <p>14 Q. Let us go on to the next page,</p> <p>15 which is K17161, and let us see, now this is --</p> <p>16 can you just describe what this document is?</p> <p>17 A. This is a copy of the invoice</p> <p>18 relating to the following page where I have</p> <p>19 requested a shipment.</p> <p>20 Q. Okay, so this -- I see it. So this</p> <p>21 invoice is dated August 2nd 1996?</p> <p>22 A. Yes.</p> <p>23 Q. And you placed a request on the</p> <p>24 next page, K17161?</p> <p>25 A. Yes.</p>	<p>1 Confidential - Attorneys' Eyes Only</p> <p>2 order/invoice would be the documentation that she</p> <p>3 would put in.</p> <p>4 Q. So an invoice like this, I just</p> <p>5 want to make sure, that an invoice like this is</p> <p>6 what would actually trigger the shipment to</p> <p>7 happen?</p> <p>8 A. Yes.</p> <p>9 Q. So looking at the fax that you</p> <p>10 sent, K17162, do you know whether you sent this in</p> <p>11 as a result of receiving the e-mail in the next</p> <p>12 page there?</p> <p>13 A. Yes, this was -- the e-mail was to</p> <p>14 Liz Matthews, but she has obviously printed it off</p> <p>15 and given it to me and asked me to arrange</p> <p>16 shipment.</p> <p>17 Q. That is your handwriting at the</p> <p>18 bottom of K17163?</p> <p>19 A. Yes.</p> <p>20 Q. Now, the e-mail came from someone</p> <p>21 named Geri Greto; do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. Who is Geri Greto?</p> <p>24 A. Well, looking at this now she</p> <p>25 worked for Bill Craig.</p>
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<p>1 Confidential - Attorneys' Eyes Only</p> <p>2 Q. Placed a request on July 10, 1996,</p> <p>3 right?</p> <p>4 A. Yes.</p> <p>5 Q. Any reason why it took them a few</p> <p>6 weeks to generate the invoice?</p> <p>7 A. Possibly we might have been waiting</p> <p>8 for the product. That is the only thing I can</p> <p>9 think of because this was not forecasted product.</p> <p>10 So in fact you were stealing from the UK</p> <p>11 production. They may have been short of certain</p> <p>12 items at that time. Then we wait until it is okay</p> <p>13 to take them because the UK business, because</p> <p>14 their forecast would take precedent.</p> <p>15 Q. So normally if the product was in</p> <p>16 stock and you had plenty of it you would expect</p> <p>17 the invoice to be generated sooner?</p> <p>18 A. Yes.</p> <p>19 Q. At the bottom of the invoice it is</p> <p>20 Sue Stephenson who is the signatory?</p> <p>21 A. Yes.</p> <p>22 Q. So you were not the signatory on</p> <p>23 invoices like this?</p> <p>24 A. No, this is what she put into her</p> <p>25 system to arrange the shipment. So the</p>	<p>1 Confidential - Attorneys' Eyes Only</p> <p>2 Q. Did you have any contact with her?</p> <p>3 A. I do not recall. It is possible</p> <p>4 that she may have rang me, but I cannot recall at</p> <p>5 all.</p> <p>6 Q. Again, for this shipment to</p> <p>7 Mr Craig it would have been someone off in the</p> <p>8 warehouse who actually packed it up and shipped</p> <p>9 it?</p> <p>10 A. Yes.</p> <p>11 Q. So you never actually saw these</p> <p>12 three boxes?</p> <p>13 A. No.</p> <p>14 Q. Did you get any confirmation that</p> <p>15 Mr Craig -- sorry, first, that the shipment</p> <p>16 actually went out?</p> <p>17 A. The copy invoice would be my</p> <p>18 confirmation that it had been arranged.</p> <p>19 Q. Did you get any confirmation that</p> <p>20 he received it?</p> <p>21 A. No.</p> <p>22 Q. Now, let us move on to the next</p> <p>23 one. Now we are on K17164, and I will also ask you</p> <p>24 to look at K17165. This looks like another</p> <p>25 shipment to Ms Glus; is that right?</p>

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2 A. Yes.		2 A. I would assume that that was	
3 Q. Now, on K17165, the memo that you		3 possibly -- it does not sound like it was a UK	
4 got from -- that is the memo that you received		4 costs centre. So I am just wondering whether this	
5 from Ms Matthews; is that right?		5 was something that Helen or Louis had given Liz to	
6 A. Yes.		6 charge it to his cost centre. But whichever it	
7 Q. And it references a Louis		7 would seem as if we could not, which is why we	
8 Camilleri; do you see that?		8 have gone with the sample budget number.	
9 A. Yes.		9 Q. So you end up the using the same	
10 Q. Have you ever met or spoken with		10 number?	
11 him?		11 A. Yes. Which makes me think that	
12 A. No.		12 that might have been an American cost centre which	
13 Q. Do you know -- it refers here on		13 we would not have been able to use.	
14 17176 to one capsule storage unit.		14 Q. Okay. Again, this shipment would	
15 A. Yes.		15 have been sent by someone that Ms Stephenson	
16 Q. What is that?		16 contacted --	
17 A. That is just a moulded unit that		17 A. Yes.	
18 fits at the side of the brewer to hold the		18 Q. -- you did not see the boxes	
19 capsules.		19 yourself?	
20 Q. So that is just to store product		20 A. No.	
21 prior to it going into the machine?		21 Q. All these shipments that went out	
22 A. Yes. It is just so it is available		22 did you make any effort to inspect the product	
23 there at the side of the machine.		23 before it went to see exactly what it looked like	
24 Q. And did you have any knowledge at		24 or anything like that?	
25 the time of whether Mr Camilleri had a singles		25 A. No.	
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1 Confidential - Attorneys' Eyes Only		1 Confidential - Attorneys' Eyes Only	
2 machine or where it was in his facility and what		2 Q. Then we have an invoice on K17166,	
3 he was doing with it?		3 let us see, this is February 13th of 1997; is that	
4 A. No.		4 right?	
5 Q. Did you ever get any sense of that?		5 A. Yes.	
6 A. Well, I would have assumed the fact		6 Q. Does that -- can you just confirm,	
7 that I am shipping him product he had a singles		7 does that go with the...	
8 brewer. Because what would he want the product		8 A. I think that goes with 67, 68 and	
9 for. The nature of the capsule -- with in cup		9 69.	
10 products you have product in a cup and you can		10 Q. Okay. So from K17166 through 69	
11 have a particular product and you can tip it in a		11 these documents refer to one shipment?	
12 cup and you can pour hot water on it and you can		12 A. Yes.	
13 make a cup of coffee. You cannot do that with a		13 Q. Maybe let us start backwards on	
14 capsule. You have to have the brewer to dispense		14 K17169; is this the request that you got from	
15 it.		15 Ms Matthews to do another shipment to Ms Glus and	
16 Q. Other than --		16 Mr Camilleri?	
17 A. Yes --		17 A. Yes.	
18 Q. Did you get any other		18 Q. And then K17168 is your request to	
19 confirmation --		19 Ms Stephenson?	
20 A. -- no.		20 A. Yes.	
21 Q. -- now, this one indicates -- well,		21 Q. Now, there are some references here	
22 at least in the request to you from Ms Matthews		22 to a Phillip Morris broker, Martin Strauss, with a	
23 says "charged to cost creditor 6500"?		23 phone number; do you see those?	
24 A. Yes.		24 A. Yes.	
25 Q. What does that mean?		25 Q. Who was that?	

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1 Confidential - Attorneys' Eyes Only 2 A. To be perfectly honest I do not 3 know. I can only assume it is the broker that 4 deals with the clearance of the shipment. 5 Q. Do you recall speaking with him at 6 all? 7 A. No. 8 Q. Then on K17167 a fax from DFDS 9 Transport; can you describe what this is? 10 A. This looks like confirmation of the 11 flight details. 12 Q. This would be flight details for 13 the shipment of -- 14 A. For the shipment, yes. 15 Q. -- so this was a flight that was to 16 occur four days later on February 15th? 17 A. Yes. 18 Q. I am sorry, there are two 19 flights -- 20 A. From Amsterdam to New York. It has 21 gone to Amsterdam and then it has gone on to New 22 York. 23 Q. -- so it was -- I just want to make 24 sure I understand -- it was to fly from the UK to 25 Amsterdam on February 12th?		1 Confidential - Attorneys' Eyes Only 2 Q. Okay. Let us -- almost done with 3 these -- let us move on to K17170. Does that -- 4 are these last two pages 170 and 171 -- do they go 5 together? 6 A. Yes. 7 Q. So K17170, is that a memo that you 8 received from Ms Greto? 9 A. Yes. 10 Q. Do you recall receiving it? 11 A. Well, yes, it is my file, so I 12 would have received it. 13 Q. I know it was in your files, but I 14 said do you recall whether you received this and 15 looking at it do you have a specific memory of it? 16 A. No. 17 Q. This is early 1998, correct? 18 A. This is January 5th 1998. 19 Q. And then you respond to her on 20 January 12th, the next page? 21 A. Yes. 22 Q. It looks like at that time 23 Ms Virdee became the new contact in the export 24 department? 25 A. I think what happened possibly at
1 Confidential - Attorneys' Eyes Only 2 A. (Witness nodded). 3 Q. And then from Amsterdam to New York 4 on the 15th? 5 A. That looks like the case. 6 Q. Did you get any confirmation 7 afterwards that it actually went on those flights 8 and arrived safely? 9 A. No. 10 Q. Now, on K17166 the signatory at the 11 bottom is a Lindsey Virdee; do you see that? 12 A. Yes. 13 Q. Who is Ms Virdee? 14 A. I think she must have been a 15 different person within the export department. I 16 am not quite sure whether Sue had left by that 17 time and Lindsey took over or whether Sue was 18 still there but Lindsey just took over the 19 shipment. 20 Q. Do you know if Lindsey is still at 21 the company? 22 A. I do not believe she is. 23 Q. Did you know her when she was at 24 the company? 25 A. Yes.	Page 59	1 Confidential - Attorneys' Eyes Only 2 that time was that instead of going through 3 Liz Matthews and then coming through to me to 4 export it looks as if maybe we cut out the middle 5 men, if you like, and requested that Geri go 6 straight to export. 7 Q. I see. So Ms Virdee -- well, let 8 me make sure I understand -- Ms Virdee was in a 9 different department from Ms Stephenson? 10 A. No, she was within the export 11 department. 12 Q. Okay. 13 A. But instead of Geri sending the fax 14 to Liz, Liz sending the fax to me, me sending the 15 fax to Sue/Lindsey, I think we have asked in 16 future can you go through straight to Lindsey and 17 she will arrange shipment. 18 Q. Okay. I understand. So at this 19 point did you deal with -- do you have any direct 20 involvement, put it that way, with this new 21 requested shipment, or did it just pass to -- 22 A. No, I would say it passed to 23 Lindsey that particular one. 24 Q. -- so do you have any idea of what 25 happened after this fax, whether there was

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<p>1 Confidential - Attorneys' Eyes Only 2 shipment sent or anything like that? 3 A. No. 4 Q. All right. We have been going for 5 over an hour. Why don't we take a five minute 6 break. 7 (Off the record at 10.25 am) 8 (On the record at 10.37 am) 9 MR RADER: I have asked the court 10 reporter to mark as Exhibit 2 the document with 11 number K17172. 12 (Exhibit 2 marked for identification) 13 A newspaper article entitled: "Sly spends £1,000 14 on a cup of coffee"; Ms Appleton, does this 15 document look familiar to you? 16 A. Yes. 17 Q. Did it come from your file cabinet? 18 A. No. 19 Q. Are you the one who located it? 20 A. No. 21 Q. How are you familiar with it? 22 A. Because I remember the buzz at the 23 time in the office that Sly Stallone has -- had -- 24 we put a machine, I think it was Shepperton 25 Studios, I am not quite sure, but we put a machine</p>	<p>1 Confidential - Attorneys' Eyes Only 2 singles? 3 A. No. 4 Q. The article mentions a voltage 5 issue in the last sentence; do you see that? 6 A. Yes. 7 Q. Are you familiar at all with the 8 use of singles brewing machines on US voltage? 9 A. Yes. 10 Q. How does that work? 11 A. There is a lead that fits into the 12 back of the machine with a plug on the end, and it 13 is just a case of putting a different lead in the 14 box. If they are ever shipped to a different 15 country they have a different voltage you just 16 ship them another lead that fits their voltage. 17 Q. So to your knowledge there should 18 be a way to use these brewers in the US? 19 A. Yes. 20 Q. I am going to ask the court 21 reporter to mark Exhibit 3. 22 (Exhibit 3 marked for identification) 23 The documents in Exhibit 3, are you familiar with 24 them? 25 A. Only the 17249.</p>
<p>1 Confidential - Attorneys' Eyes Only 2 there for him to use. And I remember him taking 3 it back to the States with him and I remember it 4 being in the paper and the paper would have done 5 the rounds in the office. 6 Q. So you -- your recollection of this 7 article is from the time -- around the time it was 8 published? 9 A. Yes. 10 Q. Have you seen it recently, in the 11 last weeks or months? 12 A. No. 13 Q. Shepperton Studios that you 14 mentioned, to your knowledge is that in the UK? 15 A. Yes. 16 Q. Do you have -- did you ever 17 participate in shipping any singles cartridges to 18 Mr Stallone in the US? 19 A. No. 20 Q. Do you know anybody else at Kraft 21 who did that? 22 A. No. 23 Q. Other than this article do you have 24 any other knowledge other than what you read in 25 this article about Mr Stallone's involvement with</p>	<p>1 Confidential - Attorneys' Eyes Only 2 Q. So 17249, which is a fax from you 3 to Geri Greto I assume? 4 A. Yes. 5 Q. Did that come -- 6 A. One of the previous documents in 7 here. 8 Q. -- did that come from your file 9 cabinet? 10 A. Yes. 11 Q. I realise a number of pages have 12 been grouped together here, the other pages in 13 this group are not from your file cabinet? 14 MR SCHLITZ: Look carefully at the 15 rest of the pages. 16 A. Yes, the 249 and 250 look like 17 duplicates. It is exactly the same. And the 18 other one is the original memo from Geri, linked 19 to the fax to Geri saying that Lindsey Virdee is 20 the new contact. 21 MR RADER: Right. 22 THE WITNESS: I have never seen 247 23 and I have never seen 248. 24 BY MR RADER: 25 Q. Okay. So just focussing for a</p>

17 (Pages 62 to 65)

KEURIG v KRAFT

21 FEBRUARY 2008

DEPOSITION OF J. APPLETON

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1	Confidential - Attorneys' Eyes Only		1 Confidential - Attorneys' Eyes Only
2	BY MR RADER:		2 way that they are kept in that file?
3	Q. So nominally with the document		3 A. Yes.
4	retention and destruction policy that might		4 Q. Now, Mr Rader asked you about
5	suggest that the documents would not be around any		5 whether you got confirmation that certain
6	more but you happened to have kept them?		6 shipments actually were received, it is part of
7	A. Yes.		7 your responsibilities, did it ever come to your
8	Q. Did you go back and look at any		8 attention that shipments were not received?
9	archive boxes to see if there were any other		9 A. Yes.
10	documents from this timeframe --		10 Q. Could you explain that.
11	A. No.		11 A. Well, once you have arranged the
12	Q. -- when you add faxes and the other		12 shipment because the person at the other end would
13	documents that we have looked at in these ad hoc		13 be expecting them, if they did not arrive there
14	shipments, as you describe them, did you have any		14 would either be a phone call to say where is the
15	formal record keeping procedure that you were		15 shipment, and I would investigate that with the
16	required to go by to produce documents?		16 export department and they would follow that up.
17	A. No.		17 Q. Then what would happen?
18	Q. Do you know whether you kept all of		18 A. If -- well, I am assuming they
19	the faxes and documents related to these, or are		19 would feed back to me and say give me the details,
20	these just ones that you happened to see in the		20 but none of it is documented with that kind of...
21	file?		21 Q. So if there was a problem you would
22	A. Well, obviously these are the ones		22 hear about it?
23	that are in the file, but I am not quite sure		23 A. Oh, yes.
24	whether -- you can tell, I think, that there are		24 Q. Okay. Mark this as Defendant's
25	possibly some missing documents because you		25 Exhibit 1.
		Page 79	Page 81
1	Confidential - Attorneys' Eyes Only		1 Confidential - Attorneys' Eyes Only
2	have -- you should have a fax and a copy invoice		2 (Defendant's Exhibit 1 marked for identification)
3	for each of those. But sometimes they did not fax		3 This is K001746 through K0017467. Would you
4	the copy invoice back and I obviously did not		4 please look through these four pages first
5	follow up.		5 (pause).
6	Q. Do you know Mr Lee Rowan?		6 A. Okay.
7	A. No.		7 Q. Please look at K001746; is this
8	Q. It is two minutes after 11.00 and I		8 your handwriting?
9	predicted we would be done by 11.00. I do not have		9 A. Yes, it is.
10	any further questions. I just want to thank you		10 Q. It is dated August 2nd, 1996; is
11	for your time and for coming in. If Mr Schlitz		11 that correct?
12	wants to ask you any questions he is certainly		12 A. Yes.
13	welcome to do that.		13 Q. It is from you; is that correct?
14	THE WITNESS: Thank you.		14 A. Yes.
15	MR SCHLITZ: I have a few		15 Q. And to Geri Greto; is that correct?
16	questions. First, today Mr Rader has shown you		16 A. Yes.
17	Exhibit 1 and Exhibit 4 and you have testified		17 Q. Can you explain what this document
18	these are documents in the United States file; is		18 is?
19	that correct?		19 A. This is just me saying to Geri that
20	A. Oh my United States file, yes,		20 we have realised that the shipment that she had
21	sorry.		21 requested in July had not been sent, apologising
22	Q. This file, is this kept in the		22 and telling them that it was being dispatched that
23	ordinary course of your business?		23 particular day.
24	A. Yes.		24 Q. And when you say it has been
25	Q. Did you provide the documents the		25 dispatched that particular day, that is something

21 (Pages 78 to 81)

Exhibit 4

**THIS EXHIBIT HAS BEEN
REDACTED IN ITS ENTIRETY**